

CONTRACT DOCUMENTS  
and  
TECHNICAL SPECIFICATIONS  
for  
WATERSIDE MARINA RENOVATION

August 2015



***City of***  
***Norfolk***

**Department of Public Works**

**7th Floor, City Hall Building  
Norfolk, Virginia 23510  
(757) 664-4631**

**CITY OF NORFOLK  
WATERSIDE MARINA RENOVATIONS  
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Posted: August 7, 2015

**INVITATION FOR BIDS  
CITY OF NORFOLK - DEPARTMENT OF PUBLIC WORKS**

**PROJECT: WATERSIDE MARINA RENOVATION**

Owner: City of Norfolk Department of Public Works Room 700, 7th floor, City Hall Building 810 Union Street, Norfolk, VA 23510 Contact: Chuck Joyner, Asst. City Engineer Tel: (757) 664-4648 / Fax: (757) 664-4603	A&E: Moffatt & Nichol 800 World Trade Center Norfolk, VA 23510 Contact: Jousha M. Hill, P.E. Tel: (757) 628-8222
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Sealed bids are to be received in City of Norfolk Public Works Department, Attn: Contracts Office, Room 700, 7th floor, City Hall Building, 810 Union Street, Norfolk, VA 23510 until **3:00 p.m., Thursday, September 10, 2015**, for the above titled Project.

The Work under this project consists of the replacement of timber decking along Waterside and the Charter Dock, upgrades to electrical service, and extension of the floating pier guide pilings.

Bidding Documents are available from the Department of Public Works, provided on a CD, upon non-refundable payment of **\$5.00 per set** in the form of a check made payable to Treasurer, City of Norfolk. Cash payments will not be accepted.

A copy of the Bidding Documents will be on file and open to inspection at The Builders and Contractors Exchange, Inc., Norfolk, VA (757-858-0680), The Builders and Contractors Exchange, Inc., Richmond, VA (804-353-8640), McGraw-Hill Construction-Dodge, Richmond, VA (804-343-2701), Reed Construction Data, Norcross, GA (800-467-2860), Valley Construction News, Richmond, VA (804-674-0397), and Hispanic Contractors Association-Carolinas, Columbia, SC (877-227-1680 ext. 8054).

A Bid Bond, certified check, or cashier's check made payable to the Treasurer, City of Norfolk, for 5% of total bid must accompany each bid. State Contractor registration class and number is required on the outside of the envelope. The City reserves the right to cancel the bid opening or to reject any or all bids in whole or part, when it is in the best interest of the City. The right to waive informalities and to determine responsiveness of any bid and responsibility of all bidders is reserved to the City. Withdrawal of bids will be in accordance with Section 33.1-42.1 of the Norfolk City Code and Section 11-54 of The Code of Virginia, 1950 (as amended).

David L. Ricks, P.E.  
Director

The Virginian Pilot – August 9, 2015  
DemandStar – August 9, 2015

## **INSTRUCTIONS TO BIDDERS**

### **1. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH**

- (a) Bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission.
- (b) Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

### **2. SUBMISSION OF BIDS**

- (a) Make all bids on "Bid Form" and seal in opaque envelope. The name of project, the contractor's name, address, and Virginia Contractor Registration Class and Number shall be placed on the outside of the envelope.
- (b) If a contract is for \$120,000.00 or more, or if the total value of all such construction, removal, repair, or improvements undertaken by the bidder within any 12 month period is for \$750,000.00 or more, the bidder is required under Title 54, Chapter 11, Code of Virginia, 1950 (as amended), to show evidence of being licensed as a Class A Contractor. If a contract is \$7,500.00 or more, but less than \$120,000.00, or if the total value of all such construction, removal, repair or improvements undertaken by the bidder within any 12 month period is less than \$150,000, the bidder is required to show evidence of being licensed as a Class B Contractor. If a contract is \$1,000 or more, but less than \$7,500, or if the total value of all such construction, removal, repair or improvements undertaken by the bidder within any 12 month period is less than \$150,000, the bidder is required to show evidence of being licensed as a Class C Contractor. The bidder shall place on the bid above its signature its Virginia Contractor Registration Class and Number. If a contract is less than \$1,000.00, licensure is not required under Title 54, Chapter 11, Code of Virginia, 1950 (as amended).
- (c) If bids are submitted by mail, enclose the above noted envelope in a second sealed, opaque envelope and address to: **City of Norfolk, Department of Public Works, Attn: Contracts Office, Room 700, 7th floor, City Hall Building, 810 Union St., Norfolk, VA 23510.** Bids submitted by mail must be received at the above address before the time designated for bid opening.
- (d) Fully fill in all blanks in ink or typewritten, and state numbers in both writing and figures. Signatures shall be in longhand with name and title printed below. Bidders shall acknowledge all addenda in spaces provided on the bid form. For unit price contracts, in the event of a discrepancy between the Total Base Bid and the total of the extension of unit prices, the total extension of unit prices governs in determining the bid amount. For unit price contracts, in the event of a discrepancy between the extension of unit prices and the unit prices, the unit prices governs in determining the bid amount.
- (e) Interlineations, alterations, and irregularities of any kind may be cause for rejection of the bid. Erasures or any physical changes on the form shall be initialed by the Bidder.
- (f) Bidders may withdraw a bid after it has been submitted to the City any time prior to the stipulated time for opening such bids. Withdrawal of bids will be in accordance with Section 33.1-42.1 of the Norfolk City Code and Section 2.2-4330 of the Code of Virginia, 1950 (as amended).

### **3. EXAMINATION OF SITE**

The bidder shall be responsible for having ascertained all pertinent local and existing conditions determinable by inspection and inquiry both on the site and adjacent thereto, including any other work being performed

thereon, and shall include in its bid all cost attendant upon problems arising from said conditions existing at the time of submission of its bid.

Reference is made to the Contract Documents for information relating to reports, explorations, underground facilities, and easements. On request, the owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. The Bidder must fill all holes, clean up, and restore the site to its former condition upon completion of such explorations, investigations, tests and studies, and hold the Owner harmless from any damage to property or injury to persons resulting from or arising out of such explorations, investigations, tests, and studies.

#### **4. INQUIRIES, INTERPRETATION AND ADDENDA**

Should a bidder find discrepancies in, or omissions from, the drawings or documents, or should it be in doubt as to their meaning, it should at once notify the Owner in writing. The Owner will welcome such inquiries and they will be given consideration. Every interpretation made by the Owner will be in the form of a printed addendum which will be on file in the office of the Owner. Addenda will be sent to each bidder, but it will be the bidder's responsibility to know of, examine and become familiar with all addenda issued. All addenda shall become a part of the Contract Documents. The Owner will not be responsible for any oral instruction.

The submission of a Bid will constitute inconvertible representation by the Bidder that the Bidder has complied with every requirement of this Section, that without exception, the Bid is premised upon the agreement by the Bidder to perform the Work required by the Contract Documents, and applying specific means, methods, techniques, sequence or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that the Bidder has given Written Notice to the Owner of all conflicts, errors, ambiguities, and discrepancies that the Bidder has discovered in the Contract Documents and the written resolutions thereof by the Owner is acceptable to the Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions of performance and furnishing the Work.

**The last day to submit RFI's for this project is 5:00 p.m., Thursday, September 3, 2015.**

#### **5. BID GUARANTEE**

Bids shall be accompanied by a bid guarantee of five percent (5%) of the amount of the total bid including all additive alternates, if any, and may be a certified check or cashier's check or a Bid Bond, made payable to: **Treasurer, City of Norfolk**. Such bid bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw its bid during the period of sixty (60) days following the opening of bids; that if its bid is accepted, it will enter into a Contract with the Owner in accordance with a form of agreement acceptable to and approved by the Owner and that the required Performance and Payment Bonds will be given; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and given said bonds within ten (10) days after it has received notice of acceptance of its bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing the damage to the Owner on account of the default of the bidder in any particular thereof. The bid bonds and checks will be returned to the bidders after the Owner and the lowest, responsive, responsible bidder have executed a contract. If the required contract has not been executed within sixty (60) days after the date of the opening of the bids, then the bond or check of any bidder will be returned upon its request, provided it has not been notified of the acceptance of its bid prior to the date of such request.

#### **6. PERFORMANCE AND PAYMENT BOND**

The Contractor shall furnish a performance bond and a labor and material payment bond each in the amount of 100% of the contract price. Said bonds shall be delivered to the Owner (in duplicate) and shall be approved by

the Owner prior to the execution of a construction contract between the Contractor and the Owner. Bonds shall be City of Norfolk standard form and shall be in accordance with Section 33.1-76 of the Norfolk City Code. All costs of bonds shall be paid by the Contractor. A bond rider will be required should change orders increase the amount of the contract by \$100,000 or more.

## **7. NEGOTIATIONS WITH APPARENT LOW BIDDER**

The City reserves the right to negotiate with the lowest, responsive, responsible bidder if the bid exceeds available funds. Negotiations may include reduction in bid price, modification and/or reduction in scope of the work, substitution of materials, or any other alterations to the work so that the low bid is reduced to within available funds including a reasonable fund balance for contingency funds to be available during the course of construction.

## **8. TIME OF COMPLETION**

- (a) Time is of the essence. All work shall be completed within **One Hundred Eighty (180)** calendar days from the Notice to Proceed. Work shall commence within (10) ten days from date of Notice to Proceed.
- (b) Work shall not commence until the Contractor has received a fully executed copy of the Contract which authorizes the Work and has also received a Notice to Proceed issued by the authorized City representative. Work commenced prior to receipt of both a fully executed copy of the Contract and a written Notice to Proceed from an authorized City official shall be deemed unauthorized and such work will progress solely at Contractor's risk.

## **9. NON-DISCRIMINATION CLAUSE**

The Contractor agrees to comply, and to require all suppliers and subcontractors paid in whole or in part from funds made available under this contract to comply with Section 122(a)(1) of the State and Local Fiscal Assistance Act of 1972 (P. L. 92-512), as amended, to wit:

"No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under Subtitle A (of Title I of the Act.)

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or Title VIII of the Act of April 11, 1968, hereafter referred to as the Civil Rights Act of 1968, shall also apply to any such program or activity."

Further, the Contractor agrees to comply with Section 33.1-53 of the Code of the City of Norfolk, Virginia 1979, as amended, regarding prohibited employment discrimination.

## **10. MINORITY BUSINESS CLAUSE**

It is the policy of the City of Norfolk to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in the City's procurement activities. Toward that end, the City encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and

minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Bidders (offerors) are asked, as part of their submission, to describe any planned use of such businesses in fulfilling this contract.

## **11. NON-COLLUSION AFFIDAVIT**

(a) Every bidder, by submitting a bid, shall be deemed to covenant, with regard to said bid, as follows:

- (1) that said bid was arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
- (2) that, unless otherwise required by law, the prices which have been quoted in the bid submitted have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
- (3) that no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where the bidder shall have failed to comply with a(1), a(2), or a(3) above.

(b) Every bidder, in addition to making the above covenants (a)(1), (a)(2) and (a)(3) will be required to provide the City of Norfolk, with the bid submitted, the affidavit contained herein.

(c) Every bidder will be required to disclose, with the submitted bid, the following information:

- (1) the correct mailing address of the bidder.
  - (2) if a corporation, the name and current mailing address of the President, the Secretary and the Treasurer of the corporation.
  - (3) if a partnership, proprietorship or other firm, the name and current mailing address of each partner, proprietor or member of said firm.
  - (4) whether or not the bidder is associated with; owns, in whole or in part; or is owned, in whole or in part, or is a subsidiary of, any other bidder.
- (d) The fact that a bidder (1) has published price lists, rates or tariffs covering items included in the submitted bid; (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items; or (3) has sold the same items to other customers at the same prices being bid, does not constitute a disclosure within the meaning of Subparagraph 9(a).
- (e) Any bid submitted by a corporate bidder shall be deemed to have been authorized by the Board of Directors of the bidder and such authorization shall be deemed to include the signing and submission of the bid and the execution of the affidavit required in (b) above as the acts and deeds of the corporation.

## **12. SUBSTANCE ABUSE AND DRUG-FREE WORK PLACE**

The Contractor agrees to comply with Section 33.1-58 of the Code of the City of Norfolk, Virginia, 1996, as amended, regarding substance Abuse and Drug-Free Work Place Policy.

Bids to be opened: **3:00 p.m., Thursday  
September 10, 2015**  
Work to be Completed in: **180 calendar days**  
Liquidated Damages: **\$250.00 per day**  
Performance Bond: **100%**  
Payment Bond: **100%**  
Bid Bond: **5%**

## **BID FORM**

To: City of Norfolk  
Department of Public Works  
810 Union Street, Room 700  
Norfolk, Virginia 23510

### **A. LUMP SUM BID**

In compliance with the Invitation for Bids and Instructions to Bidders, the General Conditions of the Contract, the contract drawings and specifications titled **WATERSIDE MARINE RENOVATION** and all addenda issued to date, all of which are part of this bid, the undersigned hereby proposes to furnish all items, including materials, labor, and equipment called for by, and in strict accordance with Contract Documents for the sum of:

**Base Bid** – Removal and replacement of decking, construction of new ramp, upgrades to electrical service, installation of electrical conduit, and other items as indicated on the plans and in the specifications:

\$ \_\_\_\_\_  
(Use words)  
Dollars (\$ \_\_\_\_\_)

**Bid Option A** – Removal and replacement of shore power pedestals along the promenade and associated wiring and switchboards, and other items as indicated on the plans and in the specifications:

\$ \_\_\_\_\_  
(Use words)  
Dollars (\$ \_\_\_\_\_)



**Bid Option B** – Removal and replacement of timber decking not included in Base Bid, removal and replacement of shore power pedestals if Bid Option A is not awarded, and other items as indicated on the plans and in the specifications:

\$ \_\_\_\_\_  
(Use words)  
Dollars (\$ \_\_\_\_\_)

**Bid Option C** – Extension of guide piles for the floating piers, and other items as indicated on the plans and in the specifications:

\$ \_\_\_\_\_  
(Use words)  
Dollars (\$ \_\_\_\_\_)

**Total Lump Sum Bid** – Base Bid + Bid Option A + Bid Option B + Bid Option C:

\$ \_\_\_\_\_  
(Use words)  
Dollars (\$ \_\_\_\_\_)

**B. ADDENDA**

The undersigned acknowledges receipt of the following addenda:

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

We agree to enter into a contract with the City of Norfolk, Virginia within ten (10) days of the award of same to us for the price named in our bid.

It is expressly agreed by us that the City of Norfolk, Virginia shall have the right to reject any and all bids and to waive any informalities.

In default of the performance on our part of the conditions of bid, our failure to enter into a contract with the City of Norfolk, Virginia, within the time above set, we herewith furnish a certified check, cashier's check (or Bid Bond) in the amount of \$\_\_\_\_\_, which shall be forfeited as liquidated damages to the City of Norfolk, Virginia, but otherwise the said check or Bid Bond shall be returned.

We agree to begin work at any time after receipt of the Notice to Proceed from the Director of Public Works and complete all of the Work within **One Hundred Eighty (180) calendar days** from the Notice to Proceed.

C. Norfolk Businesses: It is the policy of the City to support Norfolk businesses and workforce development and it encourages companies with corporate offices in Norfolk and which employ Norfolk residents to compete for City contracts. Bidders are asked, as part of their submission, to advise of their Norfolk location and detail their employment of Norfolk residents.

D. Equal Opportunity Business Development: It is the policy of the City of Norfolk to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in the City's procurement activities. Toward that end, the City encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Bidders (offerors) are asked, as part of their submission, to describe any planned use of such businesses.

1. Is your firm a minority owned business? Yes \_\_\_ No \_\_\_ If yes, please check the appropriate category: \_\_\_ African American (male), \_\_\_ African American (female), \_\_\_ Caucasian (female), \_\_\_ Hispanic (male), \_\_\_ Hispanic (female), \_\_\_ Asian American (male), \_\_\_ Asian American (female), \_\_\_ American Indian (male), \_\_\_ American Indian (female), \_\_\_ Eskimo (male), \_\_\_ Eskimo (female), \_\_\_ Aleut (male), \_\_\_ Aleut (female), \_\_\_ Other (male), \_\_\_ Other (female).

2. Subcontracting Opportunities for Small, Women Owned, Minority Business Enterprises and Disabled Veterans. All prime contractors are requested to furnish the following information regarding participation of small, women owned, minority business enterprises and disabled veterans:

a. Proposed Name of your Subcontractor(s):

b. Proposed Minority Category of Subcontractor(s) - please check the appropriate category(ies):

<input type="checkbox"/> African American (male)	<input type="checkbox"/> African American (female)
<input type="checkbox"/> Hispanic (male)	<input type="checkbox"/> Hispanic (female)
<input type="checkbox"/> Asian American (male)	<input type="checkbox"/> Asian American (female)
<input type="checkbox"/> American Indian (male)	<input type="checkbox"/> American Indian (female)
<input type="checkbox"/> Eskimo (male)	<input type="checkbox"/> Eskimo (female)
<input type="checkbox"/> Aleut (male)	<input type="checkbox"/> Aleut (female)
<input type="checkbox"/> Other (male)	<input type="checkbox"/> Caucasian (female)

	____ Other (female)
--	---------------------

c. Proposed Amount of Subcontracts:

d. Proposed Description of commodity (i.e. masonry, hauling, insulation, etc.):

e. Proposed Description of Project:

f. Proposed Total value of awards to all subcontractors:

g. Proposed Total Number of minority subcontracts awarded:

h. If you do not propose the use of any subcontractors, please check here \_\_\_\_.

E. The undersigned has read all sections under "Instructions to Bidders."

F. **CONTRACTOR'S REGISTRATION AND SIGNATURE**

Registered Virginia Contractor Class and No. \_\_\_\_\_

City of Norfolk Business License No. \_\_\_\_\_

Contractor \_\_\_\_\_ Signed \_\_\_\_\_ (SEAL)

Date \_\_\_\_\_ Title \_\_\_\_\_

NOTE: If Bidder is a corporation, write state of incorporation under signature and if a partnership, give full names of all partners.

**End of Page**

**AFFIDAVIT**

City of Norfolk, Virginia project: **Waterside Marina Renovation**

Bid Date: \_\_\_\_\_

**STATE OF VIRGINIA**

(City/County)

This day personally appeared before the undersigned, a Notary Public in and for the City/County and State aforesaid, \_\_\_\_\_, who having been first duly sworn

(name of owner, partner, president)

according to law, did depose and aver as follows:

(a) That he is \_\_\_\_\_  
(owner, partner, president, etc.)

of \_\_\_\_\_  
(insert name of contractor)

(b) That he is personally familiar with the bid of \_\_\_\_\_  
(insert name of contractor)  
submitted in connection with the above captioned City of Norfolk project.

(c) That said bid was formulated and submitted in good faith as the true bid of said bidder.

(d) That said bid in no manner violates the Sherman Antitrust Act (15 U.S.C. '1 *et seq.*), The Virginia Antitrust Act ( n59.1-9.1 through n59.1-9.17 Code of Virginia, (1950), as amended) or the Conspiracy to Rig Bids to Government Act (nn59.1-68.8, Code of Virginia (1950), as amended.

And further this deponent saith not.

\_\_\_\_\_  
**Affiant**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
**Notary Public**

MAILING ADDRESS, FAX, TELEPHONE NUMBER, and EMAIL OF BIDDER:

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IF CORPORATION, PROVIDE NAME AND MAILING ADDRESS AS REQUIRED BELOW

PRESIDENT

SECRETARY

TREASURER

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IF PARTNERSHIP, PROPRIETORSHIP, OR OTHER FIRM, PROVIDE NAME AND MAILING ADDRESS OF EACH PARTNER, PROPRIETOR, OR MEMBER OF FIRM.

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## COMPLIANCE WITH STATE LAW

### AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH

#### I. **CERTIFICATION**

- A. The Bidder/Vendor (Please fill in with your enterprise's complete name)

\_\_\_\_\_

certifies that it is organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50.

The identification number issued to Bidder/Vender by the State Corporation Commission: \_\_\_\_\_

- B. Bidder/Vendor that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall describe why it is not required to be so authorized:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bidder/Vendor: \_\_\_\_\_

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### II. **INSTRUCTIONS**

- a. The Bidder/Vendor shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Vendor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

- b. A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Bidder's/Vendor's responsibility. Failure of the Bidder/Vendor to furnish a certification or provide such additional information as requested by the appropriate City purchasing official may render the Bidder/Vendor non-responsible.
- c. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of a Bidder/Vendor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- d. The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Bidder/Vendor knowingly rendered an erroneous certification, in addition to other remedies available to the City, the appropriate City purchasing official may terminate the contract resulting from this solicitation for default.

**End of Page**

# THE CITY OF NORFOLK, VIRGINIA

OFFICE OF THE CITY MANAGER

## CONTRACT

**THIS AGREEMENT**, made as of the \_\_\_\_ day of \_\_\_\_\_ in the year **2015**, is between the **City of Norfolk, Virginia**, acting by and through the City Manager, hereinafter styled the **City**, and

party of the second part, hereinafter styled the **Contractor**.

**WITNESSETH**, That whereas the City has awarded to the Contractor, in accordance with his bid of **September 10, 2015** a contract for **WATERSIDE MARINA RENOVATION** as described in specifications and drawings prepared therefor by **Moffatt & Nichol, 800 World Trade Center, Norfolk, Virginia 23510** hereinafter styled the Engineer, or by the City of Norfolk, and on file in the office of the Director of Public Works of the City of Norfolk, Virginia.

### ARTICLE 1 - THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 2 - DATE OF COMMENCEMENT AND COMPLETION TIMES

The Contractor further agrees to begin Work at such a date as the Director, Department of Public Works, Norfolk, Virginia, shall notify it to begin via a Notice to Proceed letter, and that it will achieve Substantial Completion of the entire Work in accordance with Paragraph 9.8 of the General Conditions not later than **One Hundred Eighty (180) consecutive calendar days** from the date of commencement as well as achieve Final Completion in accordance with Paragraph 9.10 of the General Conditions not later than **Thirty (30) consecutive calendar days** from the date of Substantial Completion.

### ARTICLE 3 - LIQUIDATED DAMAGES

The Contractor and the City recognize that time is of the essence of this Agreement. In view of the difficulty of ascertaining the loss which the City will suffer by reason of delay in the performance of the Work, the Contractor and the City hereby agree upon as the liquidated damages set below that the City will suffer by reason of delay and/or default, and not as a penalty. Further, the City shall deduct and retain the amount of such liquidated damages out of the moneys which may be due or become due to the Contractor under this Agreement.

Accordingly, should the Contractor fail to achieve Substantial Completion the aforesaid Work in accordance with the contract documents to the satisfaction and approval of the Engineer within the time stipulated in Article 2 above, the Contractor shall pay to the City of Norfolk, Virginia, **Two Hundred Fifty Dollars and Zero Cents (\$250.00)** for every calendar day beyond the time set for substantial



completion.

After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining Work within the contract time or any proper extension thereof granted by the City, the Contractor shall pay the City **One Hundred Dollars and Zero Cents (\$100.00)** for every calendar day beyond the time set for final completion until the Work is completed and ready for final payment.

#### **ARTICLE 4 - CONTRACT PRICE**

The City shall pay the Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined below subject to additions and deductions as provided in the Contract Documents:

For all Work other than Unit Price Work, a lump sum of:

\_\_\_\_\_ Dollars and \_\_\_\_\_ Cents (\$\_\_\_\_\_)

All specific cash allowances are included in the above price and have been computed in accordance with Paragraph 3.8 of AIA A201-2007, General Conditions of the Contract for Construction (as modified).

#### **ARTICLE 5 - PAYMENTS**

Based upon applications for payment submitted to the Engineer by the Contractor and certificates for payment issued by the Engineer, the City shall make monthly progress payments on account of the contract sum to the Contractor as provided in the conditions of the contract as follows:

The City will pay the Contractor, on or about the thirtieth calendar day after receipt of a Request for Payment, ninety-five percent (95%) of the portion of the contract sum properly allocable to labor, materials, and equipment incorporated in the Work and ninety-five percent (95%) of the portion of the contract sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing by the parties, less the aggregate of previous payments in each case; provided, however, that the owner, at any time after fifty percent (50%) of the Work has been completed, if it finds that satisfactory progress is being made, may make any of the remaining partial payments in full; and upon final completion, a sum sufficient to increase the total payment to one-hundred percent (100%) of the contract sum, less such retainage as the Engineer shall determine for all incomplete Work and unsettled claims. But such full payment or payments shall in no manner be construed as reducing the amount of the bond, or the liability of the surety thereon, until final completion and acceptance of all items of Work herein set forth.

The action of the Engineer by which the Contractor is to be bound according to the terms of this contract shall be that evidenced by his final estimate and certificate, all prior estimates upon which ninety-five percent (95%) or more may be made, being merely payment on account, and not payments for accepted Work, and subject to the correction of such final estimate, which may be made with notice to the Contractor.

#### **ARTICLE 6 - CONTRACTOR'S REPRESENTATION**

To induce the City to enter into this Agreement, the Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been provided with the Contract Documents, and (2) reports and drawings of a hazardous environmental condition, if any, at the site, which have been provided with the Contract Documents.

E. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work.

F. Contractor is aware of the general nature of Work to be performed by City and others at the Site that relates to the Work as indicated in the Contract Documents.

G. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor

H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

I. Contractor hereby certifies that it has familiarized itself with Sections 33.1-86 through 33.1-93 of the Code of the City of Norfolk, Virginia, 1979, as amended, entitled "Ethics in Public Contracting," including the additional statutes set forth in Section 33.1-86 thereof, and further that all amounts received by the Contractor pursuant to this Agreement are proper and in accordance therewith.

J. Contractor hereby certifies that at all times during which any term of this Agreement is in effect, it does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

K. Contractor hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

## **ARTICLE 7 - CONTRACT DOCUMENTS**

The Contract Documents consist of the following:

- a. Invitation for Bids
- b. Instructions to Bidders
- c. Bid Form/Affidavit
- d. Bid Bond
- e. Contract
- f. Performance Bond
- g. Payment Bond
- h. AIA A201-2007, "General Conditions of the Contract for Construction" (as modified)
- i. Certificate of Insurance
- j. Notice of Award
- k. Notice to Proceed
- l. Change Orders (if any)
- m. Other Documents as may be required by law or appended hereto
- n. Plans and Drawings prepared by: **Moffatt & Nichol, 800 World Trade Center, Norfolk, Virginia 23510**
- o. Specifications prepared or issued by: **Moffatt & Nichol, 800 World Trade Center, Norfolk, Virginia 23510**
- p. Addendum (as listed in Bid Form)

\*\*\*\*\*

Witness the following signatures and seals:

**Witness:**

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

SEAL if  
Incorporated

\_\_\_\_\_  
*Written Signature*

\_\_\_\_\_  
*Printed Signature*

\_\_\_\_\_  
*Title* *Date*

Virginia State Contractor's License No. \_\_\_\_\_  
City of Norfolk Business License No. \_\_\_\_\_

**Contents Approved:**

\_\_\_\_\_  
Director of Public Works

**Approved as to form and correctness:**

\_\_\_\_\_  
Deputy City Attorney

**CITY OF NORFOLK, VIRGINIA**

By \_\_\_\_\_  
City Manager

**Attest:** \_\_\_\_\_  
City Clerk

\*\*\*\*\*

I hereby certify that the money required for this contract (agreement, obligation or expenditure) is in the City Treasury to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose.

Account: \_\_\_\_\_

Amount: \_\_\_\_\_

Contract No.: \_\_\_\_\_

Vendor Code: \_\_\_\_\_

\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Date

**End of Page**

## PERFORMANCE BOND

Bond No. \_\_\_\_\_  
Amount: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ of \_\_\_\_\_ hereinafter called the Contractor and \_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, hereinafter called the Surety, and authorized to transact business within the Commonwealth of Virginia as the Surety, are held and firmly bound unto the City of Norfolk as Owner, in the sum of \_\_\_\_\_ **Dollars and** \_\_\_\_\_ **Cents (\$** \_\_\_\_\_ **)**, lawful money of the United States of America, for payment of which, well and truly be made to the Owner, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has executed and entered into a certain Agreement, hereto attached, with the Owner dated \_\_\_\_\_, 2015 for

### **WATERSIDE MARINA RENOVATION**

NOW THEREFORE, if the Contractor, and its successors and assigns, shall at all times duly, promptly, and faithfully perform the Work and any alteration in or addition to the obligations of the Contractor arising thereunder, including the matter of infringement, if any, of patents or other proprietary rights, and shall assure all guarantees against defective workmanship and materials, including the guarantee period following final completion by the Contractor and final acceptance by the Owner and comply with all the covenants therein contained in the Specifications, Drawings, and other Contract Documents required to be performed by the Contractor, in the manner and within the times provided in the Agreement, and shall fully indemnify and save harmless the Owner from all costs and damage which it may suffer by reason or failure to do so, and shall fully reimburse and repay it all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work to be performed thereunder, or payment thereunder before the time required therein, or waiver of any provision thereof, or assignment, subletting or transfer thereof or any part thereof, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, addition to the terms of the Contract Documents or any such payment, waiver, assignment, subcontract or transfer.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

Whenever Contractor shall be declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Owner shall have the right, at its option, to require the Surety to promptly proceed to remedy the default within 30 days of notice by proceeding or procuring others to proceed with completing the Agreement with its terms and conditions including the correction of any defective work and the provision of safety measures required as the result of such default; and all reserves, deferred payments, and other funds provided by the Agreement to be paid to Contractor shall be paid to Surety at the same times and under the same conditions as by the terms of that Agreement such fund would have been paid to Contractor had the Agreement been performed by Contractor; and Surety shall be entitled to such funds in preference to any

assignee of Principal of any adverse claimant. Notwithstanding the above, the Owner shall have the right, with the approval of the Surety which shall not be unreasonably withheld, to take over and assume completion of the Agreement and be promptly paid in cash by the Surety for the cost of such completion less the balance of the Contract price.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, **2015**, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

(\_\_\_\_\_)

By: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Attest

SURETY

\_\_\_\_\_  
By: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Attest

APPROVED AS TO FORM: \_\_\_\_\_, 2015

City of Norfolk, OWNER

By: \_\_\_\_\_  
Deputy City Attorney

NOTE: Date of Bond shall not be prior to the date of the Agreement. If the Contractor is a partnership, all partners shall execute the Bond.

IMPORTANT: The Surety named on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent shall be accompanied by a certified copy of the authority to act for the Surety at the time of signing of this Bond.

**End of Page**

## PAYMENT BOND

Bond No. \_\_\_\_\_

Amount: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_ of \_\_\_\_\_, hereinafter called the Contractor and \_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the State \_\_\_\_\_, hereinafter called the Surety, and authorized to transact business within the Commonwealth of Virginia as the Surety, are held and firmly bound unto the City of Norfolk as Owner, in the sum of \_\_\_\_\_ **Dollars and \_\_\_\_ Cents (\$\_\_\_\_\_)**, lawful money of the United States of America, for payment of which, well and truly be made to the Owner, the Contractor and the Surety bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the Contractor has executed and entered into a certain Agreement, hereto attached, with the Owner dated \_\_\_\_\_, 2015 for

### WATERSIDE MARINA RENOVATION

NOW THEREFORE, if the Contractor shall promptly make payments to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in the Agreement, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools consumed, used or rented in connection with the construction of the Work, and all insurance premiums on the Work, and for all labor performed in the Work, whether by Subcontractor or otherwise, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract Documents or to the Work to be performed thereunder, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, all above parties bounded together have executed this instrument this \_\_\_\_ day of \_\_\_\_\_, **2015**, the name and corporate seal of each corporate party being hereto affixed and those presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR

(\_\_\_\_\_)

By: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Attest

SURETY

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)

\_\_\_\_\_  
Attest

APPROVED AS TO FORM: \_\_\_\_\_, 2015

City of Norfolk, OWNER

By: \_\_\_\_\_  
Deputy City Attorney

NOTE: Date of Bond shall not be prior to the date of the Agreement. If the Contractor is a partnership, all partners shall execute the Bond.

IMPORTANT: The Surety named on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent shall be accompanied by a certified copy of the authority to act for the Surety at the time of signing of this Bond.

**End of Page**





**AIA®**

# Document A201™ – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

*(Name and location or address)*

Waterside Marine Renovation

THE CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia,  
hereinafter called the "City" or the OWNER:

*(Name, legal status and address)*

**THE ARCHITECT:**

*(Name, legal status and address)*

This document has important  
legal consequences.

Consultation with an attorney  
is encouraged with respect to  
its completion or modification.

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User Notes:

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 BASIC DEFINITIONS**

#### **§ 1.1.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### **§ 1.1.2 THE CONTRACT**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 THE PROJECT**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### **§ 1.1.5 THE DRAWINGS**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.6 THE SPECIFICATIONS**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them ~~as being necessary to produce the indicated results or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for at no additional cost to the Owner.~~

§ 1.2.1.1 Should any conflict be found in the Contract Documents, the Architect/Engineer shall interpret or construe the Contract Documents so as to secure the most substantial and complete performance of the Work. In other words, the better quality or great quantity of work shall be provided in accordance with the Architect/Engineer's interpretation. The Architect/Engineer's decision in this matter shall be final.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Wherever in the Contract Documents the words "as approved", "as directed", "as required", "acceptable", "satisfactory" and words of like import are used with references to the Work or its performance, and without further qualification, it shall mean as approved, as directed, as required by the Architect/Engineer and acceptable, satisfactory, etc. to the Architect/Engineer.

§ 1.2.5 The general character of the detailed work is shown on the Drawings, but minor modifications may be made on the shop drawings or mock-ups. Any details shall be worked out in relation to their location and their connection to other parts of the Work. Where on any drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out also apply to all other like portions of the Work. Where details or conditions are indicated but started only, such details or conditions shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts in the Work unless otherwise indicated or specifically noted.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Wherever the term "Architect" appears in this Agreement, it shall mean either Architect or Engineer.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings, specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, them, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The drawings, specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. As such, the City is hereby declared sole-owner of these documents in regards to this Project and will abide by the limitations described in Subparagraph 1.5.1. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. are authorized to use and reproduce applicable portions of the drawings, specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the drawings, specifications and other documents prepared by

the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

~~§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.~~

§ 1.5.2. Intentionally Omitted.

**§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

**ARTICLE 2 OWNER**

**§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

**§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.1. Intentionally Omitted.

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise specified, the following applies:

a. Water line taps, construction of pits for water taps and meter, and restoration of the area to its original condition shall be performed by the Contractor at its expense. Only new water meters shall be installed by City forces at the expense of project sponsor (i.e. the City or private developer). All the aforementioned shall be coordinated by the Contractor.

b. Sanitary taps and cleanouts shall be done by the Contractor or its Subcontractor at the Contractor's expense. HRSD tap fees will be paid by the Owner.

c. For gas and electrical work and associated meter installations, the Contractor shall be responsible for complete coordination of work with utilities, including provision of all necessary labor, equipment, and materials as required in the Contract Documents as well as payment of all resulting costs to aforesaid Work.

d. For telephone and cables, the Contractor shall be responsible for coordination of telephone trunk lines and cable installation with telephone/television company to the "point of penetration" to the facility, including provision of all necessary labor, equipment, and materials as required in the Contract Documents as well as payment of resulting costs to all aforesaid work.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner-Owner, subject to Subparagraph 3.74, but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.3.1 The Contractor shall be responsible for protecting pins, stakes, marks, hubs, and control points. Replacement of damaged or destroyed pins, stakes, marks, hubs or control points shall be conducted under the supervision of a surveyor licensed in the Commonwealth of Virginia, if required by the City, and at the Contractor's expense. The Contractor shall coordinate with the Survey Division of the Department of Public Works (664-4645) prior to resetting of points and shall provide certified documentation to include the reference/recovery sheet with swing ties for new benchmarks.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.(1) CD containing the drawings, specifications, and addendums, in PDF format, free of charge.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Any failure by the Contractor to acquaint himself with such information shall not relieve him from the responsibility for successfully performing the Work.

.1 Dimensions of Work shall not be determined by scale or rule, but figured dimensions shall be used at all times.

.2 The Contractor shall verify all dimensions by measurement at the jobsite, and shall take any and all other measurements necessary to verify the drawings and to properly layout the Work.

.3 The study of the Contract Documents by the Contractor shall be made sufficiently in advance of the actual layout of the work so as to allow the Contract Documents to be interpreted or modified by the Architect.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs these obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, or for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means,

methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

a. Substituted Materials. Request for approval of any substituted material and equipment for those specified or shown on the drawings shall be made in writing to the Engineer within 30 days after award of the Contract. If this request is not submitted, the Engineer reserves the right to have the Contractor furnish the material and equipment definitely specified or shown on the plans. The Contractor shall show, in writing, the monetary savings, improvement in quality, time savings, and other factors to be gained from the proposed substitute. Approval of substitute materials and equipment will be at the sole discretion of the Engineer.

b. Or Equal. It is not the intent of these specifications to exclude or omit products or any responsible manufacturer, if said products are equal in every respect to those mentioned herein. Whenever an article, or any class of materials is specified by trade name or byname of any particular patentee, manufacturer or dealer, it shall be taken as intending to mean equal thereto in quality, finish, size, durability and equally as serviceable for the purpose for which it is or they intended. Request for approval of any "equal" material or product for those specified or shown on the drawings shall be made in writing to the Engineer within 30 days after award of the Contract. If this request is not submitted, the Engineer reserves the right to have the Contractor furnish the material and products definitely specified and shown on the plans. The Contractor shall show, in writing, that the material or product being proposed is equal in every respect to that specified and shall provide all necessary supporting documentation requested by the Engineer. The quality shall be determined by the Engineer, and he alone shall be sole judge as to what materials or services will be accepted as equal. No substitution of materials, methods or services specified shall be made without written approval from the Engineer.

c. Materials and Equipment Manufacturer's Recommendation. All materials, equipment or other items specified by trade or manufacturer's name shall be handled, installed, erected or connected in strict conformity with the manufacturer's recommendations and/or specifications. By making requests for substitutions, the Contractor:

1. Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

2. Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

3. Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs and time extensions related to the substitution which may subsequently become apparent; and

4. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

#### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

#### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Contractor shall be advised that there is NO permit fee for new construction, additions, etc. for CITY-OWNED BUILDINGS. Before final payment is made on the Project, Contractor shall demonstrate that the necessary inspections, certificates of occupancy, clearance, and/or acceptance from the City, State, Federal, and/or private entities/organizations such as from the City's Building Official, Corps of Engineers, Department of Environmental Quality, etc. have been obtained.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. disturbed, Contractor shall not disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so "except in an emergency as required by Paragraph 10.4.. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. With respect to unforeseen Work that is paid on a Unit Price Basis, any adjustment in quantity and Contract price will be determined by the Architect/Engineer subject to the provisions of Subparagraph 15.1.5.3. Architect/Engineer will review with the Contractor the Architect/Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or



otherwise). If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.4.1 Possible Price and Times Adjustments.** Contractor shall not be entitled to any adjustment in the Contract Price or Contract Terms if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner in respect to Contract price and Contract times by the submission of a Bid or becoming bound under a negotiated contract; or

b. The existence of such condition could reasonably have been discovered or revealed as a result of examination, investigation, exploration, test, or study of the Site and contiguous areas required by the bidding requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

c. Contractor failed to give written notice within the time and as required by Subparagraph 3.7.4.

**§ 3.7.4.2 Subsurface and Physical Conditions.** The Contract Documents identify:

a. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that the Architect/Engineer has used in preparing the Contract Documents.

b. Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that the Architect/Engineer has used in preparing the Contract Documents.

**§ 3.7.4.3 Limited Reliance by Contractor on Technical Data Authorized.** Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data", if any, shall be identified in Supplementary General Conditions. Contractor may not rely upon or make any claim against Owner, Architect/Engineer, or any of the Architect/Engineer's consultants with respect to:

a. The completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, and safety precautions and programs incident thereto; or

b. Any Contractor interpretation of or conclusion drawing from any "technical data" or any such data, interpretations, opinions, or information.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. The Contractor shall attach with monthly invoices the original copy of sales invoices/receipts for materials or equipment that are covered under allowances.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness in~~ sufficient time to avoid delay in the Work..

### **§ 3.9 SUPERINTENDENT**

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

1. The superintendent shall not be changed except with the consent of the Owner, unless the superintendent ceases to be in the Contractor's employ.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, and prior to mobilization or proceeding with any work on site, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 A qualified General Superintendent shall be present on the project site whenever work is being performed, unless otherwise authorized in writing by the Owner. The Contractor shall notify the Owner whenever the superintendent will be absent for four hours or more. This notification shall include the name of the designated substitute. Any substitute shall be familiar with the project and have the same authority of the primary superintendent. Verbal notification is acceptable for periods less than one full workday.

1. The qualified General Superintendent shall remain on site each day throughout all work days whenever contract work is performed through the punch list period and until all punch list items are complete. Lack of supervision shall constitute a reduction in the Contract Amount of General Conditions, Supervision, or other category which solely represents at the General Contractor's work responsibility, in the amount of \$250.00 per day, or any portion of a day, based on the amount indicated.

§ 3.9.5 The superintendent shall serve as a day to day point of contact on the Project for the Owner and shall, as a minimum, have the authority to:

- a. Act on behalf of the Contractor;
- b. Direct the work of Subcontractors;
- c. Respond to directed changes in the schedule;
- d. Provide detailed updates to and respond to inquiries from the Owner on the progress of the work;
- e. Act upon verbal and written notification of non-conforming work;

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f. Respond to any complaints regarding the conduct or actions of any employee of the Contractor or any Subcontractor.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. At the Pre-Construction Conference, the Contractor shall submit to the Engineer for its timely review a preliminary construction schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

1. The progress schedule shall be in the form of a bar graph and shall identify each major or critical activity. The progress schedule shall be updated monthly. Five (5) copies of the updated progress schedule shall be submitted with each Application for Payment.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1. Reproduction of the Contract Drawings, or any portion thereof, shall not be acceptable.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal

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schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

The Contractor, within 15 days from the Notice to Proceed, shall submit to the Engineer for approval, a complete schedule of submittals for shop drawings and technical and/or engineering data sheets covering all items and equipment for this Contract as listed in each respective division. Submit for approval six (6) copies of certified Shop Drawings and technical data sheets plus sufficient copies for Contractor's use. Approval of the above submissions shall not relieve the Contractor from complying with the drawings and specifications, nor shall such approval be construed as a guarantee of the accuracy of dimensions or other covered items. The Engineer shall endeavor to process all drawings, data sheets, etc., within 21 calendar days of receipt unless impractical. Except for construction schedule and schedule of values that need to be turned over directly to the City for review/approval, the Contractor shall forward all other submittals for review/approval to only one clearing house. The City will notify the Contractor during the Pre-Construction Conference where to send these submittals.

1. Unless otherwise directed or specified, samples shall be submitted in duplicate. Samples shall be properly labeled, bearing the name and quality of material, name of the manufacturer, name of Project, name of the Contractor and the date of submission.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, ~~or will do so~~ and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. All copies of Shop Drawings submitted for approval shall bear the following statement: "Checked and certified correct for conformance with Contract Documents." This statement shall be dated and signed by the Contractor and shall appear on each submittal. One copy of each approved submittal shall be kept at job site at all times.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

1. The Contractor shall furnish to the field as many prints of the approved Shop Drawings as may be required.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear

such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.14.3 UNDERGROUND UTILITY DAMAGE PREVENTION ACT

The Contractor shall be required and agrees to comply with all the provisions of the Virginia Underground Utility Damage Prevention Act (Section 56-265.14, et seq. Code of Virginia, 1950, as amended) and hereby agrees to hold the City of Norfolk harmless against any loss, damages or claims of any nature whatsoever arising out of the Contractor's failure to comply with the requirements of said Act.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. In addition, immediately after the completion of the Work, or any portion thereof, the Contractor shall restore the facility, street, and surrounding area to a condition as clean as before the Work was begun. The drainage system shall also be inspected and cleaned by the Contractor. If done by the City or its agents, any expense the City may incur will be charged against the Contractor and deducted before Final Payment is made. The Contractor will be required to back fill along the edges of the sidewalks, driveways and curbs where settlement has occurred, and reshape and reslope where directed. Site must be maintained regularly according to State and City regulations, including regular grass cutting. During the progress of the Work, the sidewalks and portions of the streets adjoining the Work, or in its vicinity, must not be obstructed or littered, and the adjacent sidewalks and gutters must be kept clean as directed by the Engineer.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and ~~Owner shall be entitled to reimbursement from~~ the costs thereof shall be charged to the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but

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shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 The requirements of this Paragraph 3.18 shall be incorporated into the Contractor's insurance policies in a manner approved by the Owner.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 ~~The Owner shall retain an architect~~ architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. ~~That person or entity is identified as the Architect identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.~~ The term "Architect" means the Architect or the Architect's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

~~§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

§ 4.1.3. Intentionally Omitted.

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 As the Owner's Project representative, the Consulting Architect/Engineer's duties, responsibilities and limitations of authority shall be presented during the Pre-Construction Conference. The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.1.1 Engineer -- An individual or entity having an Agreement with the Owner to furnish services as Owner's independent professional consultant with respect to the Project and who is identified as such in the Agreement.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the Contractor's

operations (1) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that (2) to endeavor to guard the Owner against defects and deficiencies in the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not neither have control over, charge of, or responsibility nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and

assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 4.2.15 PRE-CONSTRUCTION CONFERENCE.** Before starting the Work, the Architect/Engineer/Owner will schedule a conference to review the requirements on such matters as Project supervision and on-site inspection, Shop Drawing schedules and submission, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety, labor provisions and equal opportunity in employment and any other items pertinent to the Project. Present at the conference will be the Architect/Engineer, Owner, Project Representative, the Contractor, and its Superintendent for the project.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, ~~as seen as practicable within 15 days~~ after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.



~~§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required objection..~~

~~§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect Architect, upon written notice of such intent, makes reasonable objection to such substitution.~~

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract..~~

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

~~§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 5.4.3. Intentionally Omitted.

### § 5.5 SUBCONTRACTORS COORDINATION OF WORK

Every subcontractor performing work that affects others shall provide for all requirements of the other trades, notwithstanding the Contractor's responsibility to coordinate the Work. Should the work provided by unsuitable for the application of work by any other subcontractor, the subcontractor shall notify the Contractor and the Engineer in writing immediately. The Contractor is required to forward a copy of correspondence from his subcontractors providing notice of unsuitable work.

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## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. ~~If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15: subrogation..~~

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or between the Owner and Contractor; a Construction Change Directive may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Modifications shall be in compliance with the Code of the City of Norfolk, Virginia, Chapter 33.1.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Architect/Engineer's recommendation to the City as follows:

Architect/Engineer will review with Contractor the Architect/Engineer's preliminary determinations on such matters before rendering a written recommendation thereon (by endorsement of an Application for Payment or otherwise). City's written decision thereon (by approval of Application for Payment or otherwise) will be final and binding (except as modified by Architect/Engineer to reflect changed factual conditions or more accurate data) upon Contractor, subject to the provisions of Paragraph 7.3.4.

Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted~~ adjusted provided that there is no corresponding adjustment with respect to any other item of Work.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~ Overhead and profit costs, except where such costs have been determined by means of Paragraph 7.3.3.2 above, wherein such costs are included in the unit prices, shall be determined as follows::

Fifteen percent (15%) of the costs determined above shall be paid for overhead and profit of the Contractor or subcontractor(s) actually performing the work, including, but not limited to, field and home office expense, superintendent, taxes, subsistence expenses of any nature, premiums on bonds, insurance, and all other costs and expenses as determined by the City.

In the event the work is performed by a subcontractor or subcontractors, the Contractor shall be paid ten percent (10%) of the total costs determined above, excluding the subcontractor's or subcontractors' overhead and profit, to cover and compensate the Contractor for its overhead and profit.

- .5 ~~Additional costs of supervision and field office personnel directly attributable to the change.~~  
Intentionally Omitted.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. ~~Architect plus overhead and profit to actual net cost.~~ When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Contractor may only include the amounts of fully executed Change Orders in the Applications for Payment.~~

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the ~~Owner pending mediation and arbitration;~~ Owner; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

Based upon Applications for Payment submitted to the Engineer by the Contractor and certificates for payment issued by the Engineer, the City shall make monthly progress payments on account of the Contract Sum to the Contractor as provided in these General Conditions of the Contract for Construction as follows:

The City will endeavor to pay the Contractor, on or about the thirtieth (30<sup>th</sup>) calendar day after receipt of Request for Payment, ninety-five (95%) percent of the portion of the Contract Sum properly allocated to labor, materials and equipment incorporated in the work and ninety-five (95%) percent of the portion of the Contract Sum properly allocated to materials and equipment suitably stored at the site or at some other location agreed upon in writing by the parties, less the aggregate of previous payments in each case; provided however, the City, at any time after fifty (50%) percent of the work has been completed, if it finds that satisfactory progress is being made, may in its sole discretion make any of the remaining partial payments in full. Also, upon Substantial Completion of the work, the City may increase total payment to one hundred (100%) percent of the Contract sum, less such retainage as the Engineer shall determine for incomplete work and unsettled claims. But such full payment or payments shall in no manner be construed as reducing the amount of the bond or the liability of the Surety thereon, until Final Completion and acceptance of all lines of work herein set forth. Final Payment shall be made upon completion of all work and acceptance by the Engineer in accordance with the General Conditions.

The action of the Engineer by which the Contractor is to be bound according to the terms of this Contract shall be evidenced by his final estimate and certificate, all prior estimates upon which ninety-five (95%) percent or more may be made, being merely payments on account, and not payments for accepted work, and subject to the corrections of such final estimate, which may be made without notice to the Contractor thereof, or of the measurements upon which the same is based.

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be ~~notarized, if required,~~ certified by an officer of the firm and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may not include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, ~~or by interim determinations of the Architect,~~ but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such

materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure to comply with obligations under the Contract.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The City reserves the right to determine payment made.

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§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the Owner for work performed by any subcontractor under this Agreement:

a. Pay the subcontractor for the proportionate share of the total payment received from the Owner attributable to the work performed by the subcontractor under this Agreement; or

b. Notify the Owner and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for work performed by the subcontractor under this Agreement. Unless otherwise provided under the terms of this Agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the City. A contract modification or Amendment to the Agreement may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. A Subcontractor inquiry for progress payment and other information shall be directed to the City Attorney's office under the Freedom of Information Act.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by

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the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.~~ Intentionally Omitted.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. The Contractor shall submit a Contractor's release from liens, claims, security interests or encumbrances along with final invoice. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall provide temporary fences, barricades, coverings, or other protection to preserve existing items indicated to remain and to prevent injury or damage to persons or property.

This includes providing protection of the Work, materials, appliances and fixtures against weather, rain, wind, storms, freezing or heat. At the end of the day's work, work likely to be damaged shall be properly protected. For work on existing buildings, the Contractor shall accomplish the work in such a manner that the remainder of the building, and its contents and inhabitants, are fully protected from any weather damage.

The Contractor shall be responsible for ensuring that adequate measures are taken to secure materials and equipment during the progress of the Work to prevent storm-related hazards. It is, therefore, essential that the Contractor take necessary precautions to ensure that openings in the building are monitored carefully. The Contractor shall take immediate actions required to seal of such openings when rain or other detrimental weather is imminent, and at the end of each workday; and ensure that the openings are completely sealed off to protect materials and equipment in the building from damage.

The provisions of this subparagraph take precedence over any similar provisions contained in the technical specifications.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. ~~If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.~~ When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner ~~direction by the City~~ and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~

**§ 10.3.3. Intentionally Omitted.**

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site ~~unless such materials or substances are required by the Contract Documents.~~ The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

## § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

**§ 10.4.1 EMERGENCY CONDITIONS.** The issuance of a Declaration of Emergency conditions by any authorized government official may result in the suspension of the Work under the Contract and/or the ordering by the City of additional work. The Contractor shall make available to the City, during the time of the declared emergency, labor and equipment for such services under the terms and conditions of the Contract. Labor and equipment rates shall not exceed FEMA reimbursable rates for the Hampton Roads area. Failure to comply with such emergency directives may result in termination of the Contract by reason of non-compliance.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

See Subparagraphs 3.18.1 and 10.3.1

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability. All liability policies shall be written in an occurrence form unless otherwise specifically approved by the City.

The Contractor shall secure and maintain in force insurance, including malicious mischief and vandalism, with minimum acceptable amounts described below, naming the City as additional insured during the life of the Contract:

.1	Worker's Compensation	Statutory
	Employer's Liability	\$200,000 per accident injury
.2	Commercial General Liability	Combined single limit \$3,000,000 or
		\$2,000,000 per occurrence
		\$3,000,000 aggregate
		\$3,000,000 products & completed
		Operations

The Commercial General Liability Insurance required above shall include the following extensions of coverage:

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- (1) The coverage shall be provided under a Comprehensive form of policy or similar thereto.
- (2) X.C.U. Coverage – If the Contract requires any work procedures involving blasting, excavating, tunneling or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as XCU liability coverage with limits of \$500,000 per occurrence and \$1,000,000 aggregate.
- (3) Broad Form Property Damage Endorsement.
- (4) Contractual Liability coverage shall be included.
- (5) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by its Subcontractors.
- (6) Products Liability and/or Completed Operations coverage shall be included.

.3 Comprehensive Automobile Liability including owned, non-owned and hired vehicles:

Combined Single limit each accident	\$2,000,000
Bodily Injured	\$1,000,000 per person
	\$2,000,000 per occurrence
	\$2,000,000 aggregate
Property Damage	\$500,000 per occurrence

.4 Environmental Impairment Liability Insurance. If applicable, as determined by the City, the Contractor shall procure and maintain during the life of the Contract Environmental Impairment Liability Insurance, which shall protect against all claims and costs including, but not limited to, bodily injury or property damage claims (including clean-up costs) caused by pollution conditions, as herein defined, arising from the contracted work. Pollution conditions means the discharge, dispersal, release or escape of smoke vapor, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage. The policy limits will be determined by the City and specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or as prescribed by City, State or Federal law/regulations. Coverages, written on a claims-made basis, shall be maintained without interruption from the date of commencement of the Work until at least one year following the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 All insurance policies required hereunder shall contain an express provision therein, or endorsement attached thereto, worded substantially as follows:

"This is not to be cancelled or become subject to reduction of coverage prior to thirty days after the insured has received written notice mailed to the address noted hereinbefore, as evidenced by return receipt of registered letter."

All insurance certificates and/or policies shall designate the City of Norfolk, its employees, and its agents as "additional insured" regarding the contracted Work.

Certificates of Insurance issued by companies licensed within the Commonwealth of Virginia shall provide the designed insurance.

Contractor shall notify the City in writing within 10 days after receiving notice of any cancellation or reduction in coverage.

Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies

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will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~SUBCONTRACTOR'S INSURANCE. The Contractor shall require all subcontractors to secure and maintain in force containing the same coverage and amounts as described in Subparagraph 11.1.2.

#### **§ 11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.  
Intentionally Omitted.

#### **§ 11.3 PROPERTY INSURANCE**

~~§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Until the work is completed and accepted by the City, the Contractor shall purchase and maintain a Builder's Risk or property insurance as is appropriate upon the entire work at the Site to the full insurable value thereof.~~

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or~~

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companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.1.1. Intentionally Omitted.

§ 11.3.1.2. Intentionally Omitted.

§ 11.3.1.3. Intentionally Omitted.

§ 11.3.1.4. Intentionally Omitted.

§ 11.3.1.5. Intentionally Omitted.

**§ 11.3.2 BOILER AND MACHINERY INSURANCE**

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~ Intentionally Omitted.

**§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

**§ 11.3.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.3.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.



§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. A Performance Bond and Payment Bond Rider is required for all Change Orders that are in the amount of \$100,000 or greater; or, if the aggregate total of multiple Change Orders is equal to or greater than \$100,000.

#### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

##### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

##### § 12.2 CORRECTION OF WORK

###### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

###### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties

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established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

~~§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

§ 12.2.2.3. Intentionally Omitted.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.6 INTEREST

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ Intentionally Omitted.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law,

but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

~~§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:~~

- ~~.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~
- ~~.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;~~
- ~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

~~§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

#### § 14.1.1: Intentionally Omitted

- .1 ;
- .2 ;
- .3 ;
- .4 .

#### § 14.1.2. Intentionally Omitted.

#### § 14.1.3. Intentionally Omitted

#### § 14.1.4. Intentionally Omitted

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not ~~executed~~ executed and costs incurred from this termination.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Decision of Owner. Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial ~~decision~~-evaluation and recommendation. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, ~~an initial decision~~ a final decision by the Owner shall be required as a condition precedent to mediation of any Claim. ~~litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker~~ Architect with no decision having been rendered, rendered by the Owner. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not ~~decide~~ evaluate disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The ~~Initial Decision Maker~~ Architect will review Claims and within ten days of the receipt of a ~~the~~ Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) ~~reject~~ recommend rejection of the Claim in whole or in part, (3) ~~approve~~ recommend approval of the Claim, (4) ~~suggest~~ recommend a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to

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evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will ~~either reject or approve~~ recommend either rejection or approval of the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will ~~render an initial decision~~ recommend approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The ~~initial Owner's decision~~ shall be final and binding ~~on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution subject to mediation or arbitration.~~

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

#### § 15.2.6. Intentionally Omitted

##### § 15.2.6.1.. Intentionally Omitted.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

#### § 15.3 MEDIATION

~~§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 15.3.1. Intentionally Omitted.~~

~~§ 15.3.2... Intentionally Omitted.~~

~~§ 15.3.3... Intentionally Omitted.~~

#### **§ 15.4 ARBITRATION**

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.1... Intentionally Omitted.~~

~~§ 15.4.1.1... Intentionally Omitted.~~

~~§ 15.4.2. Intentionally Omitted.~~

~~§ 15.4.3. Intentionally Omitted.~~

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

~~§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration; provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 15.4.4.1. Intentionally Omitted.~~

~~§ 15.4.4.2.. Intentionally Omitted.~~

~~§ 15.4.4.3. Intentionally Omitted.~~

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## **PART II**

### **1. SCHEDULES AND REPORTS**

Contractor shall submit for approval the following items in four (4) copies prior to commencing the Work:

a. A complete, detailed construction progress schedule in weekly increments, showing anticipated start and completion of all sections of the Work. Also, see sections 3.10 and 3.10.1

b. A complete list of Subcontractors

c. A breakdown of the Project contract price for use in processing monthly requisitions.

d. A projection of contract's monthly cash flow requirements for the duration of the Project.

e. The above requirements may be waived for small projects at the discretion of the Engineer.

### **2. MINORITY PARTICIPATION**

The Contractor shall notify the City in writing of the names of any minority and disadvantaged business subcontractors to be used on the Project, including the estimated dollar amount of such subcontract and the minority classification of such subcontractors. A minority and disadvantaged business is one that is at least 51% owned by an Asian American, Black, Hispanic, and American Indian, Eskimo, Aleut, or Female.

### **3. EROSION & SEDIMENT CONTROL**

On construction projects that are required by the City's Erosion & Sediment Control ordinance (City Code Chapter 15) to have an approved erosion and sediment control plan, the Contractor shall be required to implement the approved plan and comply with all conditions of the plan. A copy of the approved plan and the Virginia Erosion and Sediment Control Handbook. (Third Edition, 1992) shall be kept at the City. If the Contractor determines that the approved plan cannot be effectively carried out, the Contractor shall be responsible for notifying the plan approving authority and requesting a plan amendment as provided for in the Virginia Erosion and Sediment Control Law (Code of Virginia Title 10.1, Chapter 5, Article 4, Section 10.1-563C).

### **4. RIGHT TO AUDIT**

For cost-reimbursement contracts, change orders issued for fixed priced contracts or other contracts in excess of \$30,000, which include the provisions of services, the Contractor shall retain all books, records and other documents relative to this Contract for five (5) years after final payment or until audited by the Office of the City Auditors shall have full access to and the right to examine and duplicate any of said materials during said period.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~

## **SECTION 00102**

### **LIST OF DRAWINGS**

#### **PART 1 - GENERAL**

##### **1.1 CONTRACT DRAWINGS**

<u>SHEET NO.</u>	<u>SHEET TITLE</u>
G-001	COVER SHEET & DRAWING INDEX
G-002	GENERAL NOTES
G-003	LEGEND & ABBREVIATIONS
S-100	PROJECT OVERVIEW
S-101	DECKING PLAN (1 OF 2)
S-102	DECKING PLAN (2 OF 2)
S-300	TIMBER DOCK TYPICAL SECTION
S-301	FIXED DOCK TYPICAL SECTION
S-400	ENLARGED VIEW
S-500	TYPICAL DETAILS
S-501	TYPE A STAIR DETAILS
S-502	TYPE B STAIR DETAILS
S-503	RAMP DETAILS
S-504	PILE EXTENSION DETAILS
E-001	ELECTRICAL GENERAL NOTES (1 OF 2)
E-002	ELECTRICAL GENERAL NOTES (2 OF 2)
E-100	ELECTRICAL DEMOLITION PLAN AND NOTES
E-101	ELECTRICAL PLAN
E-500	ELECTRICAL DETAILS (1 OF 2)
E-501	ELECTRICAL DETAILS (2 OF 2)
E-600	SINGLE LINE DRAWING & PANEL SCHEDULES

#### **PART 2 – PRODUCTS (Not Used)**

#### **PART 3 – EXECUTION (Not Used)**

**END OF SECTION**

## **SECTION 01010**

### **SUMMARY OF WORK**

#### **PART 1 - GENERAL**

##### **1.1 PROJECT DESCRIPTION**

The Base Bid for the project includes:

- Removal and replacement in-kind of the existing timber decking on the timber dock along the promenade and charter dock. The new decking will be attached to existing stringers and joists.
- Removal and reinstallation of existing items attached to the fixed docks including cleats, ladders, stanchions, pier lanterns, and power pedestals in conjunction with the decking replacement. Provide new connection hardware for cleats.
- Removal and replacement in kind of existing ramps and stairs. Replace existing hand rails with Americans with Disabilities Act (ADA) – compliant hand rails where indicated.
- Construction of a timber ramp and ADA-compliant hand rail at a new location
- Installation of new stanchions where indicated on the Contract Drawings
- Removal of existing metal pile caps and installation of plastic pile caps along the fixed dock.
- Installation of empty conduit in conjunction with the decking replacement for future electrical upgrades.
- Replacement of existing power pedestal on fixed pier along with associated switchboards, conduit and wiring.
- Upland electrical connection improvements including installation of equipment enclosures, switchboards, and transformers.
- Installation of conduits between the upland electrical connection improvements and the timber dock. Note installation preferences on Drawing E-501.
- Site demolition and restoration.

Bid Option A includes removal and replacement of existing shore power pedestals on the timber dock along promenade with associated wiring and switchboards.

Bid Option B includes:

- Removal of and replacement of the existing timber decking in-kind on the remaining segment of timber dock not included in the base bid.
- Removal and replacement of cleats, stanchions, and light pedestals in conjunction with the decking replacement.
- Installation of new stanchions where indicated on the Contract Drawings
- Removal and replacement of existing shore power pedestals in conjunction with the decking replacement if Bid Option A is not executed.

Bid Option C includes extension of the guide piles for the marina's floating piers.

##### **1.2 PROJECT LOCATION**

Waterside Marina is located at 333 Waterside Drive in downtown Norfolk, Virginia, at the zero mile marker of the Intracoastal Waterway on the Elizabeth River.

### 1.3 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Contractor shall furnish the labor, materials, equipment and supplies to perform all Work specified and/or required to complete the project in accordance with the contract documents.
- B. Contractor's Duties: Unless specifically noted, the Contractor shall provide and pay for:
  - 1. Labor, materials, and equipment.
  - 2. Tools, construction equipment and fuel.
  - 3. Water and utilities required.
  - 4. Freight, sales tax, and building permit fees.

### 1.4 USE OF THE PREMISES

- A. All work shall be within the limits of construction shown on the plans.
- B. Contractor is responsible to correct all collateral damage to existing conditions caused by his work.
- C. The respective utility owners shall approve utility outages and shutdowns.

### 1.5 REFERENCE SPECIFICATIONS AND STANDARDS

- A. The following reference specifications and standard detail drawings (latest editions) shall be applicable to this project unless otherwise superseded by the project and specifications:
  - 1. Virginia Department of Transportation (VDOT) Road and Bridge Specifications
  - 2. VDOT Road and Bridge Standards
  - 3. Manual on Uniform Traffic Control Devices Virginia Work Area Protection Manual
  - 4. Virginia Erosion and Sediment Control Handbook (VESCH)
  - 5. Virginia Work Area Protection Manual
- B. The Contractor shall familiarize himself with the above standards and specifications, as well as these project specifications, and submit to the CE in written form any questions or proposed revisions for his interpretation or approval, respectively. Failure to comply with the standard drawings and specifications shall constitute shutdown of job and removal of unsatisfactory work at the Contractor's expense until all requirements are satisfied as directed by the CE.

### 1.6 PRODUCT SUBSTITUTIONS

Products specified are for establishing the type, design, and quality required. Products of equal type, design, and quality produced by other manufacturers will be considered

provided the request for substitution and requisite product data is submitted to the Construction Engineer's (CE) for review and approval. If in the CE sole discretion an item of material or equipment proposed by the Contractor is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by the CE as an "or equal" item.

#### 1.7 EXAMINATION OF PLANS AND SITE

The Contractor shall examine the plans and site and familiarize himself with the scope of work before submitting a bid.

#### 1.8 AUTHORITY OF THE CONSTRUCTION ENGINEER

The Contractor shall perform all of the work specified herein to the entire satisfaction, approval, and acceptance by the City. The CE shall decide the answers to all questions relating to measurements of quantities, to the character of the work performed, and to whether the rate of progress will ensure completion within the Contract time. In addition, the CE will decide all questions as to the meaning of the specifications, and the CE shall have the authority to stop the work if necessary to provide its proper execution.

#### 1.9 AUTHORITY AND DUTIES OF THE INSPECTOR(S)

- A. Inspectors employed by the City of Norfolk (Inspector) are authorized to inspect all work performed and materials furnished. Such inspection shall extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials used. The Inspector is not authorized to alter or waive the provisions of these specifications or to make changes in the plans.
- B. The Inspector is placed on the project to keep the CE informed of its progress and the manner in which it is being performed. The Inspector will endeavor to call to the attention of the Contractor any nonconformance with the plans or specifications. The Inspector is not authorized to make a final acceptance of the work or any part of it, to approve any operation or item, to issue instructions contrary to the plans and specifications, or to act as foreman for the Contractor. The Inspector will have authority to reject defective work and materials and to suspend work that is being improperly performed.
- C. Such inspection shall not relieve the Contractor of any obligation to furnish acceptable materials or to provide completed construction that is in strict accordance with the plans and specifications.
- D. The Inspector will exercise such additional authority only as may from time to time be delegated by the CE, who shall also advise the Contractor in writing of such delegations of authority affecting his operations.

#### 1.10 PERSONNEL – SUPERVISION

An experienced superintendent and necessary assistants competent to supervise the particular types of work involved shall be assigned to the project by the Contractor and shall be available at all times when work is in progress. The Contractor shall notify the CE in writing of the superintendent assigned. The superintendent shall represent the

Contractor and all directions given to the superintendent shall be as binding as if given to the Contractor.

#### 1.11 CONTRACTOR'S RESPONSIBILITY FOR WORK

- A. Until final acceptance of the work by the CE, the Contractor shall be responsible for maintenance and the correction of any damages that may occur in conjunction with this work. The Contractor shall rebuild, repair, restore, and make good all discrepancies or damages to any portion of his work as determined by the CE.
- B. In case of suspension of work due to inclement weather, the Contractor shall be responsible for the project and shall take such precautions as may be necessary to prevent damage to the work and provide for adequate drainage, without compensation. Therefore, scheduling of work shall be most important in minimizing maintenance of completed work.

#### **PART 2 – PRODUCTS**

(NOT USED)

#### **PART 3 – EXECUTION**

(NOT USED)

**END OF SECTION**

## **SECTION 01019**

### **EXISTING UTILITIES**

#### **PART 1 – GENERAL**

##### **1.1 EXISTING UTILITIES**

- A. Special precautions shall be taken by the Contractor to avoid damage to existing overhead and underground facilities owned and operated by the City of Norfolk or by public or private companies.
- B. Before proceeding with the Work, the Contractor shall confer with all public or private companies, agencies or departments that own and operate utilities in the vicinity of the construction work. The Contractor shall bear the entire responsibility and cost of locating and avoiding, or repairing damage to said existing utilities.
- C. Call “MISS UTILITY” (1-800-552-7001) at least 48 hours prior to commencing any excavation or ground penetration.

#### **PART 2 - PRODUCTS**

NOT USED

#### **PART 3 – EXECUTION**

NOT USED

**END OF SECTION**

## **SECTION 01200**

### **TRANSPORTATION AND HANDLING OF MATERIALS AND EQUIPMENT**

#### **PART 1 - GENERAL**

##### **1.1 DESCRIPTION**

- A. The Contractor shall make all arrangements for transportation, delivery, and handling of equipment and material required for prosecution and completion of the Work.
- B. Shipments shall be addressed and consigned to the proper party-giving name of Project, street number and City. Shipments shall not be delivered to Owner except where otherwise directed.

##### **1.2 DELIVERY**

- A. Arrange delivery of products in accordance with construction schedules and in ample time to facilitate inspection prior to installation.
- B. Coordinate deliveries to avoid conflict with Work and conditions at the site and to accommodate the following:
  - 1. Work of other Contractors
  - 2. Limitations of storage space.
  - 3. Availability of equipment and personnel for handling products.
  - 4. Owner's use of premises.
- C. Do not have products delivered to project site until the Architect-Engineer (AE) has approved related Shop Drawings.
- D. Have products delivered to site in manufacturer's original, unopened, label containers. Keep CE informed of delivery of all equipment to be incorporated in the Work.
- E. Immediately on delivery, Contractor shall inspect shipment to assure:
  - 1. Product complies with requirements of Contract Documents and review submittals.
  - 2. Quantities are correct.
  - 3. Containers and packages are intact. The labels are legible.
  - 4. Products are properly protected and undamaged.



### 1.3 PRODUCT HANDLING

- A. Contractor shall provide equipment and personnel necessary to handle products by methods to prevent soiling or damage. CE will not be responsible for accepting shipments of any kind. If owner offers to assist with receipt of shipments, Owner is not liable for any damage to materials.

### **PART 2 – PRODUCTS**

NOT USED

### **PART 3 – PAYMENT**

NOT USED

**END OF SECTION**

## **SECTION 01205**

### **PROJECT MEETINGS**

#### **PART 1 GENERAL**

##### **1.1.1 SUBMITTALS (NOT APPLICABLE)**

##### **1.2 PRECONSTRUCTION CONFERENCE**

###### **1.2.1 Scheduling**

After award of the construction contract and prior to the start of any construction work, the CE shall schedule and conduct a preconstruction conference. The Contractor's Project Manager, Superintendent and Quality Control System Manager shall attend this meeting. The Contractor is encouraged to have an officer of his company (Project Manager could be this person) and representation from each of his sub-contractors and major construction work divisions at the conference. This conference shall be held at a location and time as specified by the CE.

###### **1.2.2 Purpose**

The purpose of this preconstruction conference is to enable the CE to outline the procedures that will be followed by the City in its administration of this construction contract and to discuss the performance that will be expected from the Contractor. This conference will allow the Contractor an opportunity to ask questions about the City's supervision and inspection of contract work, about security requirements, regulations, and other similar matters. The CE may invite Marina and other City personnel involved in the work to attend this conference.

###### **1.2.3 Discussion Items**

The following is a sample list of items for discussion during the preconstruction conference; however, the Construction Engineer may modify this list or include additional items for discussion as conditions and the work require.

- a. Authority of the Construction Engineer/Construction Engineer's Representative.
- b. Contractor's Progress Schedule.
- c. Correspondence Procedures.
- d. Contractor Labor Standards Provisions.
- e. Contract Modifications and Administrative Procedures.
- f. Contractor's Administrative, Laydown and Storage Areas.
- g. Procedures for Processing Submittals.

- h. Payment Estimate Data and Procedures.
- i. Contractor Utilities.
- j. Security Requirements and Other Regulations, if applicable.
- k. City Furnished Equipment, if applicable.
- l. Disposition of Salvage Property.
- m. Contractor Insurance Requirements.
- n. Value Engineering Program.
- o. Contractor Performance Evaluation.
- p. As-Built Drawings.
- q. Warranty of Construction and Single Point of Contact.
- r. Turnover of Completed Facilities.
- s. Contractor Plan of Operations - The Contractor shall indicate his method(s) of layout and accomplishment of the scheduled work, and his verification/certification procedures for accuracy of the respective areas of work to be accomplished.
- t. Contractor Required Notification Procedures
- u. Contractor's Submittal Register
- v. Contractor's Survey and Information Reporting Procedures
- w. Contractor's Placement Plans and Activity Hazard Analysis Related to Placement Procedures

### 1.3 OTHER MEETINGS

Other meetings may be held after the Preconstruction Conference, and such meetings may include the following:

- a. Contractor's Site Safety and Health Plan
- b. Quality Control Plan
- c. Environmental Protection Plan

#### 1.4 MINUTES OF MEETINGS

The City shall prepare minutes of the meeting and will provide the Contractor with a signed original for review and concurrence. The minutes shall include all items discussed at the meeting and the City will make all corrections provided by the Contractor and resubmit the corrected minutes to the Contractor within seven days.

**PART 2 PRODUCTS** (THIS PART NOT USED)

**PART 3 EXECUTION** (THIS PART NOT USED)

**END OF SECTION**

## **SECTION 01210**

### **STORAGE OF MATERIALS**

#### **PART 1 - GENERAL**

##### **1.1 DESCRIPTION**

- A. Store and protect material in accordance with manufacturer's recommendations and requirements of these Specifications. Contractor shall take appropriate measures to ensure the safety of individuals coming into contact with equipment, tools, and materials at the Work site.
- B. Contractor shall make all necessary arrangements and provisions for the storage of materials. All excavated materials, construction equipment, and materials to be incorporated into the Work shall be placed so as not to injure any part of the Work or existing facilities and so that free access can be had at all times to all parts of the Work and all public utility installations in the vicinity of the Work.
- C. Contractor shall be fully responsible for loss or damage to stored materials.
- D. Store materials on-site.

##### **1.2 MAINTENANCE OF STORAGE**

- A. Maintain periodic system of inspection of stored products on scheduled basis to assure that:
  - 1. State of storage facilities is adequate to provide required conditions.
  - 2. Required environmental conditions are maintained on continuing basis.
  - 3. Products exposed to elements are not adversely affected.

##### **1.3 PROTECTION AFTER INSTALLATION**

- A. Provide protection of installed products to prevent damage from subsequent operations. Remove protection when no longer needed, prior to completion of Work.
- B. Control traffic to prevent damage materials and surfaces.
- C. Provide coverings to protect materials from damage.

## **PART 2 - PRODUCTS**

Section Not Used

## **PART 3 - EXECUTION**

Section Not Used

## **PART 4 – COMPENSATION**

### **4.1 BASIS OF PAYMENT**

- A. Payment for work described in this Section and shown on the Contract Drawings, including all labor, materials, services and equipment necessary to complete the work to the satisfaction of the Owner, shall be compensated in accordance with Specification Section 01270 Measurement and Payments.

**END OF SECTION**

## **SECTION 01270**

### **MEASUREMENT AND PAYMENT**

#### **PART 1 GENERAL**

##### **1.1 REFERENCES (Not Used)**

##### **1.2 SUBMITTALS (Not Used)**

##### **1.3 LUMP SUM PAYMENT ITEMS**

Payment items for the work of this contract for which contract lump sum payments will be made are listed in the SCHEDULE OF UNIT PRICES and described below. All costs for items of work, which are not specifically mentioned to be included in a particular lump sum or unit price payment item, shall be included in the listed lump sum item most closely associated with the work involved. The lump sum price and payment made for each item listed shall constitute full compensation for furnishing all plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

###### **1.3.1 Item No. 1 – Base Bid**

Payment to be made for this item includes all costs associated with the timber decking replacement for the Base Bid area as indicated in the contract documents, including, but not necessarily limited to: mobilization/demobilization; removal and replacement of the existing timber decking; removal and reinstallation of existing items attached to the fixed dock decking; replace timber ramp and stairs and hand rails; install new ramp and hand rail; install new stanchion along dock; pile cap replacement; shorepower upgrades; upland electrical connection improvements, site restoration and clean-up.

###### **1.3.2 Item No. 2 – Bid Option A**

Payment to be made for this item includes all costs associated replacing existing shore power pedestals and wiring (to be pulled through conduits installed in Base Bid) along the timber dock, as indicated on the Contract Drawings, including, but not necessarily limited to: mobilization/demobilization; incidental decking removal and replacement, panel connections; site restoration and clean-up.

###### **1.3.3 Item No. 3 – Bid Option B**

Payment to be made for this item includes all costs associated with the timber decking replacement for the Alternate Bid B area as indicated in the contract documents, including, but not necessarily limited to: mobilization/demobilization; removal and replacement of the existing timber decking; removal and reinstallation of existing items attached to the fixed dock decking; shorepower upgrades; site restoration and clean-up.

###### **1.3.4 Item No. 4 – Bid Option C**

Payment to be made for this item includes all costs associated with installation of guide pile extensions on the marina's floating piers, including, but not necessarily limited to: mobilization/demobilization; removal and replacement of miscellaneous hardware, installation of the pile extensions, site restoration, and clean-up.

#### 1.4 UNIT PRICE PAYMENT ITEMS

Payment items for the work of this contract on which the contract unit price payments will be made are listed in the BID PROPOSAL and described below. The unit price and payment made for each item listed shall constitute full compensation for performing all work required for each of the unit price items.

##### 1.4.1 Item No. 1 – Stanchions (Each)

Payment to be made for this item includes all costs associated with the replacement of damaged or missing stanchions along the fixed dock as indicated in the contract documents in the event the condition of the existing element is unsuitable for reinstallation and as approved by the CE.

##### 1.4.2 Item No. 2 – Pier Lanterns (Each)

Payment to be made for this item includes all costs associated with the replacement of damaged or missing pier lanterns along the fixed dock as indicated in the contract documents in the event the condition of the existing element is unsuitable for reinstallation and as approved by the CE.

##### 1.4.3 Item No. 3 – Cleats (Each)

Payment to be made for this item includes all costs associated with the replacement of damaged or missing cleats along the fixed dock as indicated in the contract documents in the event the condition of the existing element is unsuitable for reinstallation and as approved by the CE.

##### 1.4.4 Item No. 4 – Ladders (Each)

Payment to be made for this item includes all costs associated with the replacement of damaged or missing ladders along the fixed dock as indicated in the contract documents in the event the condition of the existing element is unsuitable for reinstallation and as approved by the CE.

##### 1.4.5 Item No. 5 – 4" x 12" Stringers (L.F.)

Payment to be made for this item includes all costs associated with the replacement of damaged stringers encountered during the Timber Decking Replacement in the event the condition of the existing element is unsuitable for reinstallation and as approved by the CE.

##### 1.4.6 Monthly Partial Payments

Monthly partial payments will be based on the percent complete and in accordance with the approved Schedule of Values, as determined by the CE.



**PART 2 PRODUCTS** (Not Applicable)

**PART 3 EXECUTION** (Not Applicable)

**END OF SECTION**

## **SECTION 01320**

### **PROJECT SCHEDULE**

#### **PART 1 GENERAL**

##### **1.1 GENERAL**

- A. The Contractor shall submit his Progress Schedule to the CE for approval at the Pre-Construction Conference specified in SECTION 01205. The computer software system or manual method(s) used by the Contractor to produce his Progress Schedule and any required associated information shall require approval by the CE prior to submittal by the Contractor. Progress schedule shall be certified as complete by the Contractor's Quality Control Representative.
- B. The Contractor shall submit revise progress schedules monthly with request for payment.

##### **1.2 QUALIFICATIONS**

The Contractor CQC representative shall be responsible for the preparation and certification as complete all required project Progress Schedule submittals and reports.

#### **PART 2 PRODUCTS (Not Applicable)**

#### **PART 3 EXECUTION**

##### **3.1 FORM OF SCHEDULES**

- A. Prepare schedules in the form of a critical path method (CPM) in accordance with the General Conditions.
- B. Task Required: Major components, stages of construction and all items (or elements are listed in the table of contents of the Specifications.
- C. Format of Listings: The chronological order of the start of each item of Work (early start date.)
- D. Identification of Listings: By major specification section numbers.

##### **3.2 CONTENT OF SCHEDULE**

- A. Construction Progress Schedule:
  - 1. Show the complete sequence of construction by activity.
  - 2. Show the dates for the beginning, and completion of, each element of construction.
  - 3. Show critical path activities.

##### **3.3 PROGRESS REVISIONS**

- A. Indicate progress of each activity to date of submission.
- B. Show changes occurring since previous submission schedule:
  - 1. Major changes in scope.
  - 2. Activities modified since previous submission.
  - 3. Revised projections of progress and completion.
  - 4. Other identifiable changes.
- C. Provide a narrative report, as needed, to define:
  - 1. Problem areas, anticipated delays and the impact on the schedule.
  - 2. Corrective action implemented, and its effect.
  - 3. The effect of changes on schedules of other prime contractors.

#### 3.4 SUBMISSIONS

- A. Submit initial schedules within two weeks after Award of Contract:
  - 1. Engineer will review schedules and return review copy within 10 days after receipt.
  - 2. If required, resubmit within 7 days after return of review copy.
- B. Submit the number of copies which the Contractor requires, plus (3) three copies of which two will be retained by the Owner and one by the Engineer.

#### 3.5 DISTRIBUTION

- A. Distribute copies of the review schedules to:
  - 1. Job site file
  - 2. Subcontractors
  - 3. Owner
  - 4. Other concerned parties
- B. Instruct Recipients to report promptly to the Contractor, in writing, any problems anticipated by the projections shown in the schedules.

**END OF SECTION**

## **SECTION 01330**

### **SUBMITTAL PROCEDURES**

#### **PART 1 – GENERAL**

##### **1.1 Description of Work**

- A. Section Includes: General requirements and procedures related to preparation and transmittal of Submittals to the Construction Engineer (CE) demonstrating performance of Work. Submittals include schedules, Contractor's Drawings, Samples, Manuals, Methods of Construction, and Record drawings. Other requirements for submittals are specified under applicable sections of the Contract Documents.

##### **1.2 Submittal Requirements**

###### **A. General**

1. Submit each under separate cover or transmittal. Furnish neat, legible, and sufficiently explicit detail to enable proper review for compliance with the Contract Documents. Show complete and detailed fabrication; assembly and installation details; wiring and control diagrams; catalog data; pamphlets; descriptive literature; and performance and test data. Include calculations or other information sufficient to show comprehensive description of structure, machine, or system provided and its intended manner of use.
  - a. With each submission, furnish the CE specific written notation of each variation in Contractor's Submittals from requirements of Contract Documents. Furnish justification in the submittal for each such deviation.
  - b. Fabrication, purchase or delivery of materials to the site, and installation of materials or Work performed before approval, or not conforming to approved submittals, shall be at Contractor's risk. Any work, materials, or equipment determined to be not in compliance with the Contract Documents is subject to removal and replacement at no additional cost to the project.
2. The CE's review and approval of submittals shall not relieve Contractor from responsibility for meeting the requirements of the Contract Documents, unless the CE has received specific written notice of each variation and has given specific written approval. Contractor assumes all risks of error and omission.
3. Contract Work, materials, fabrication, and installation shall conform to the approved submittals.

## B. Process and Requirements

Within ten (10) days after receipt of Notice to Proceed, the Contractor shall submit to the CE for approval a construction schedule. The construction schedule shall be acceptable to the CE as being the Contractor's schedule for the orderly progression of the Work to completion within the specified Contract Times. Acceptance of the schedule will neither impose on the CE responsibility for the sequencing, scheduling or progress of the Work nor interfere or relieve the Contractor from the Contractor's full responsibility.

1. With the first submittal, but not later than 30 days after issuance of Notice to Proceed, submit a complete submittal schedule, listing as near as practicable and by Specification Section number, submittals required and approximate date submittal will be forwarded. Arrange submittal schedule so that related equipment items are submitted concurrently.
2. To each submittal affix a signed Certification Statement indicating the Contractor has determined and verified all field measurements, field construction criteria, materials, dimensions, catalog numbers and pertinent data and has checked and coordinated each item with other applicable approved drawings and all requirements of the Contract Documents. Certification statement shall also identify any deviations from the specifications and an explanation of the deviation if applicable.
3. Identification:
  - a. Submit identification data, as applicable, contained thereon or permanently adhered thereto:
    - 1.) Project Number (if applicable)
    - 2.) Project name and location
    - 3.) Submittal number
      - a.) Number sequentially as submitted
      - b.) Re-submittals shall bare the original submittal number
    - 4.) Product identification
    - 5.) Applicable drawing number and specification section
    - 6.) Contractor's certification statement
    - 7.) Identify on exterior, catalog product data or brochures submitted in packages of multiple items. Include page numbers and catalog item numbers for items submitted.
    - 8.) Highlight catalog, product data, or brochures containing various products, sizes, and materials to show particular item submitted. Mark items not applicable to Project "not applicable" or cross-out.
    - 9.) If one or more items in a catalog submittal are not approved, resubmit only unapproved items.

## 4. Approval Process

- a. Follow submittal schedule provided to the CE. The CE will return submittals within 14 days.
- b. Submittals will be returned, marked with one of the following classifications:
  - 1.) NO EXCEPTIONS TAKEN: Requires no corrections, no marks.
  - 2.) MAKE CORRECTIONS NOTED: Requires a few minor corrections. Items may be fabricated and installed as marked without further resubmission.
  - 3.) REVISE AND RESUBMIT: Requires corrections. Items not marked may be fabricated and/or installed. Resubmit entire submittal following original submission with corrections noted.
  - 4.) REJECTED: Requires major corrections or is otherwise not in accordance with the Contract Documents. No items shall be fabricated and/or installed. Resubmit entire submittal following original submission with corrections noted.
  - 5.) SUBMIT SPECIFIED ITEM: Requires Specified item to be submitted prior to installation of material. Resubmit specified item for approval.
  - 6.) INFORMATION ONLY: Requires no corrections; items specified in the Contract Documents.
- c. It is the Contractor's responsibility to review submittals made by their supplier and subcontractors before transmitting them to the CE to assure proper coordination of the work and to determine that each submittal is in accordance with the Contract Documents. Incomplete or inadequate submittals will be returned for revision without review.
- d. The CE will record time required by the CE for excessive submittal review caused by the Contractor's re-submission, in excess of one re-submission of a required submittal, caused by unverified, unchecked or un-reviewed, incomplete, inaccurate or erroneous, or nonconforming submittals. The CE's costs will be an estimated average billing rate for labor plus related expenses.

1.3 Submittals: The following shall be provided by the Contractor.

A. Shop Drawings/Catalog cuts

- 1. For original submittal and each subsequent resubmittal required, submit a minimum of eight (8) legible prints. The CE will return three (3) copies of shop drawing prints with the indicated review actions. If additional copies of shop drawings are needed by the CE for distribution, an appropriate number of additional copies must be submitted.
- 2. Provide electronic (PDF) copy of all submittals to the CE.

B. Working Drawings

1. For original submittal and each subsequent resubmittal required, submit a minimum of eight (8) legible prints. The CE will return three (3) copies of shop drawing prints with the indicated review actions. If additional copies of shop drawings are needed by the Contractor for distribution, an appropriate number of additional copies must be submitted.
2. Submit working drawings as required for changes, substitutions, Contractor design items, and Contractor designed methods of construction. Include with drawings calculations or other information to completely explain structure, machine, or system described and its intended use. Review or approval of drawings by the CE shall not relieve the Contractor from responsibility for fulfillment of requirements of the Contract Documents. Contractor assumes risks of error, and the CE shall have no responsibility. Submit working drawings and calculations sealed, dated, and signed by a Professional Engineer registered in the State of Virginia and experienced in the work or discipline involved.

#### 1.4 Schedule of Values

- A. Before the first application for payment, the Contractor shall furnish an itemized schedule of values of all lump sum prices and unit prices for the contract. The schedule of values shall be detailed in all respects and shall include material and installation costs for all items comprising the lump sum. The schedule of values shall include overhead, profit, general costs, and quantities and it shall subdivide the work into components in sufficient detail to serve as the basis for progress payments during construction.
- B. The schedule of values shall be prepared in a form acceptable to the CE and be accompanied by such data to substantiate its correctness as required by the CE.

#### 1.5 Reports

- A. Certified Test Reports: Where certified test reports are required, they shall meet the following requirements: Before delivery of materials for which certified test reports are required, certified copies of the reports of all tests required in referenced publications or specified within the Contract Documents shall be submitted for approval to the CE in accordance with this Section. The testing shall have been performed in an approved independent laboratory, within 1-year of submittal of the reports for approval. Test reports shall be accompanied by a notarized certificate from the manufacturer or supplier certifying that the tested material meets the specified requirements and is the same type, quality, manufacture and make as that proposed to be supplied.
- B. Certificate of Compliance: At the option of the CE or where specified, the Contractor may, in lieu of the specified tests and other tests required in the various reference documents, furnish a Certificate of Compliance from the manufacturer. The certificate shall state that the manufacturer has performed all required tests; that products to be supplied meet all test requirements; that tests have been performed within one year of submittal of the certificate; that products

tested were of the same type, quality, manufacture and make as those proposed to be supplied.

1.6 Project Schedule

- A. Submit horizontal bar chart with separate bar for each major trade or operation, identifying first work day of each week.
- B. Show complete sequence of construction by activity, identifying work of separate stages and other logically grouped activities. Show projected percentage of completion for each item of work as of time of each progress Application for Payment.
- C. Update and submit schedule **at every Progress Meeting**. If work is behind schedule, illustrate how lost time will be made up in order to complete the project on time.

1.7 Construction Photographs

1.8 Warranty information

1.9 Subcontractor's qualifications where required

1.10 Condition Assessment Data

**PART 2 – PRODUCTS**

Section Not Used

**PART 3 – EXECUTION**

Section Not Used

**PART 4 – COMPENSATION**

4.1 LUMP SUM

- A. Payment for the work described in this Section and shown on the Contract Drawings, including all labor, materials, services and equipment necessary to complete the work to the satisfaction of the Owner shall be included in the lump sum price bid on the proposal sheet.

**END OF SECTION**



## **SECTION 01355**

### **ENVIRONMENTAL PROTECTION**

#### **PART 1 GENERAL**

##### **1.1 REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

##### **CODE OF FEDERAL REGULATIONS (CFR)**

40 CFR 261 Identification and Listing of Hazardous Waste

##### **ENGINEERING MANUALS (EM)**

EM 385-1-1 (1996) U.S. Army Corps of Engineers Safety and Health Requirements Manual

##### **1.2 DEFINITIONS**

Environmental pollution and damage is defined as the presence of chemical, physical, or biological elements or agents that adversely affect human health or welfare; unfavorably alter ecological balances of plant or animal communities; or degrade the environment from an aesthetic, cultural or historic perspective. Environmental protection is the prevention/control of pollution and habitat disruption that may occur during construction. The control of environmental pollution and damage requires consideration of air, water, land, biological and cultural resources; includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive materials; and other pollutants.

##### **1.3 ENVIRONMENTAL PROTECTION REQUIREMENTS**

The Contractor shall comply with all applicable Federal, State, and local laws and regulations. The Contractor shall provide environmental protective measures and procedures to prevent and control pollution, limit habitat disruption, and correct environmental damage that occurs during construction.

##### **1.4 ENVIRONMENTAL PROTECTION PLAN**

As a part of the Contractor's Work Plan, the Contractor shall submit an Environmental Protection Plan for review. This Environmental Protection Plan shall consist of a written narrative, as well as any supplemental drawings, documents, and photographs required to verify the Contractor's work will be in accordance with all laws and regulations governing the work as indicated and specified. The CE reserves the right to require the Contractor to make changes in the Environmental Protection Plan or operations if the CE determines that environmental protection requirements are not being met. The plan shall detail the actions that the Contractor shall take to comply with all applicable Federal, State, and local laws and regulations concerning environmental protection and pollution control and abatement, as well as the

additional specific requirements of this contract. No physical work at the site shall begin prior to review by the CE of the Contractor's Environmental Protection Plan covering the work to be performed.

#### 1.4.1 Spill Control Plan

The Contractor shall include as part of the environmental protection plan, a Spill Control Plan. The plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by the Emergency Response and Community Right-to-Know Act or regulated under State or local laws or regulations. This plan shall include as a minimum:

- a. The name of the individual who shall be responsible for implementing and supervising the containment and cleanup.
- b. Training requirements for Contractor's personnel and methods of accomplishing the training.
- c. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.
- d. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.
- e. The methods and procedures to be used for expeditious contaminant cleanup.
- f. The name of the individual who shall report any spills or hazardous substance releases and who shall follow up with complete documentation. This individual shall immediately notify the CE in addition to the legally required Federal, State, and local reporting channels (including the National Response Center at 1-800-424-8802 and the DEQ Tidewater Regional Office at (757) 518-2077 if a reportable quantity spill occurs. The plan shall contain a list of the required reporting channels and telephone numbers.

#### 1.4.2 Contaminant Prevention Plan

As a part of the Environmental Protection Plan, the Contractor shall prepare a contaminant prevention statement identifying potentially hazardous substances to be used on the job site and intended actions to prevent accidental or intentional introduction of such materials into the air, water, or ground. The Contractor shall detail provisions to be taken to meet Federal, State, and local laws and regulations regarding the storage and handling of these materials.

#### **PART 2 PRODUCTS** (Not Applicable)

## **PART 3 EXECUTION**

### **3.1 SPECIAL ENVIRONMENTAL PROTECTION REQUIREMENTS**

#### **3.1.1 Disposal of Solid Wastes**

Solid waste is rubbish, debris, waste materials, garbage, and other discarded solid materials. Solid waste shall be placed in containers and disposed on a regular schedule. All handling and disposal shall be conducted in such a way as to prevent spillage and contamination. The Contractor shall transport all solid waste and dispose in compliance with Federal, State, and local requirements.

#### **3.1.2 Disposal of Contractor-Generated Hazardous Wastes**

Hazardous wastes are hazardous substances as defined in 40 CFR 261, or as defined by applicable State and local regulations. Hazardous waste generated by construction activities shall be removed from the work area and be disposed in compliance with Federal, State, and local requirements. The Contractor shall segregate hazardous waste from other materials and wastes, and shall protect it from the weather by placing it in a safe covered location; precautionary measures against accidental spillage such as berming or other appropriate measures shall be taken. Hazardous waste shall be removed from City and Public property within 30 days. Hazardous waste shall not be dumped onto the ground, into storm sewers or open water courses, or into the sanitary sewer system.

#### **3.1.3 Fuels and Lubricants**

Fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants and waste oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with Federal, State, and local laws and regulations.

### **3.2 PROTECTION OF WATER RESOURCES**

The Contractor shall keep construction activities under surveillance, management, and control to avoid pollution of surface and ground waters.

#### **3.2.1 Monitoring of Water Areas Affected by Construction Activities**

The Contractor shall perform monitoring, inspections, sampling and testing, reporting, and record keeping as indicated and specified.

### **3.3 INSPECTION**

If the CE notifies the Contractor in writing of any observed noncompliance with contract requirements or Federal, State, or local laws and regulations, the Contractor shall inform the CE of proposed corrective action and immediately take such action to correct the noncompliance. If the Contractor fails to comply promptly, the CE may issue an order stopping all or part of the work until satisfactory corrective action is taken. No time extensions will be granted or costs or damages allowed to the Contractor for any such suspension.

#### 3.4 MAINTENANCE OF POLLUTION CONTROL FACILITIES

The Contractor shall maintain all constructed pollution control facilities and portable pollution control devices for the duration of the Contract or for the length of time construction activities create the particular pollutant.

**END OF SECTION**

## **SECTION 01451**

### **CONTRACTOR QUALITY CONTROL**

#### **PART 1 GENERAL**

##### **1.1 QUALITY OF WORK**

- A. The Contractor represents that it is fully experienced and possesses all necessary capital, facilities, and expertise to perform all of the work, and hereby guarantees that all of the work performed by it under the Contract will be of the highest quality and done in a workmanlike fashion in strict accordance with the requirements of the Contract.
- B. The Contractor shall at all times employ skilled workmen and use skilled Subcontractors in the performance of the Work. When required in writing by the Owner or CE, the Contractor or its Subcontractors shall remove from the Work site any person or Subcontractor who is, in the opinion of the Owner or CE, not competent, not qualified, disorderly, or otherwise unsatisfactory and shall not again employ such discharged person or Subcontractor on the Work, except with the prior written consent of the OWNER. Discharge of any person or Subcontractor shall not be the basis of any claim for compensation or damages against the Owner or CE.
- C. All Work performed under the Contract shall be of first quality workmanship throughout, with the Work complete and in full working order upon completion. Except when otherwise expressly specified in the Contract, the Contractor shall design, survey, layout, and be responsible for all methods, materials, and equipment used in performing the work.
- D. If, at any time, the Contractor's work force (including Subcontractors), in the opinion of the OWNER and/or the CE, shall be inadequate for maintaining the necessary progress required to complete the Work within the Contract Time, the Contractor shall, if so required by the OWNER and/or the CE, increase the work force or equipment to such an extent as to give reasonable assurance of compliance with the Work schedule. The failure of the OWNER and/or the CE to make such demand shall not relieve the Contractor of its obligation to perform the Work in accordance with the requirements of the Contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of its activities, construction methods, and the rate of progress required by the Contract.

##### **1.2 CONTRACTOR'S SUPERVISORY AND SITE PERSONNEL**

- A. The Contractor shall assign sufficient supervisory personnel to ensure the faithful prosecution of the Work and shall have adequate supervisory personnel present at the Work site who are either employees of the Contractor or duly authorized representatives designated in writing to the OWNER and/or the CE. The Contractor shall at all times maintain at the Work site a complete copy of the Contract Provisions, Contract Plans, and record drawings of the work that has been completed.

- B. The Contractor shall at all times have at least one duly authorized supervisory representative at the Work site that shall be fully authorized to make binding decisions on behalf of the Contractor with respect to the Work. If the Contractor's duly authorized supervisory representative at the Work site will be absent from the Work site for more than four hours, he/she shall designate an assistant who possesses the same authority and so inform the OWNER and the resident CE, if applicable.

## **PART 2 SAMPLING AND TESTING**

### **2.1 GENERAL**

- A. All of the work under this contract shall be fully tested and inspected in accordance with the Plans and Specifications. No materials shall be placed or installed without prior acceptance by the CE, based on test and inspection results.
- B. All sampling and testing necessary to secure initial approval of materials shall be the Contractor's responsibility. All subsequent sampling and testing required as the Work progresses to ensure proper and continued control of materials, will also be the responsibility of the Contractor.
- C. The Contractor shall furnish all labor and materials for the sampling and testing for which the Contractor is responsible and all such costs for labor and materials shall be borne by the Contractor.

### **2.2 SUBMITTALS**

- A. Design Data:  
Submit to OWNER for the limited purpose of assessing design conformance with information given and the design concept expressed in the contract documents.
- B. Certificates: When specified in individual specification sections, submit certification by the manufacturer and Contractor to the OWNER, in quantities specified for Product Data.
  - 1. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
  - 2. Certificates may be recent or previous (within one year from date of award) test results on material or product, but must be acceptable to the OWNER.
- C. Manufacturer's Instructions: When specified in individual specification sections, submit printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, for the OWNER's information. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.
- D. Manufacturer's Field Reports: Submit reports to the City.
  - 1. Submit report in duplicate within 15 days of observation to the OWNER for information.

2. Submit for information for the limited purpose of assessing conformance with information given and the design concept expressed in the contract documents.
- E. Installation Drawings: Submit drawings to the OWNER.
1. Submit for information for the limited purpose of assessing conformance with information given and the design concept expressed in the contract documents.
  2. Data indicating inappropriate or unacceptable Work shall be subject to action by OWNER.

## **PART 3 EXECUTION**

### **3.1 CONTROL OF INSTALLATION**

- A. Monitor quality control over suppliers, manufacturers, products, services, site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with manufacturers' instructions, including each step in sequence.
- C. If manufacturers' instructions conflict with the Contract Documents, the Contractor shall request clarification from the CE before proceeding with the work.
- D. Comply with specified standards as minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- E. Have work performed by persons qualified to produce required and specified quality.
- F. Verify that field measurements are as indicated on shop drawings or as instructed by the manufacturer.
- G. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, and disfigurement.

### **3.2 TOLERANCES**

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply with manufacturers' tolerances. If the manufacturers' tolerances conflict with the Contract Documents, the Contractor shall request clarification from the CE before proceeding with the work.
- C. Adjust products to appropriate dimensions; position before securing products in place.

### **3.3 TESTING AND INSPECTION**

A. See individual specification sections for testing and inspection required.

D. Contractor Responsibilities:

1. Deliver to agency at designated location, adequate samples of materials proposed to be used which require testing, along with proposed mix designs.
2. Cooperate with laboratory personnel, and provide access to the Work and to manufacturers' facilities.
3. Provide incidental labor and facilities:
  - a. To provide access to work to be tested/inspected.
  - b. To obtain and handle samples at the site or at source of products to be tested/inspected.
  - c. To facilitate tests/inspections.
  - d. To provide storage and curing of test samples.
4. Notify CE and laboratory 24 hours prior to expected time for operations requiring testing/inspection services.
5. Employ services of an independent qualified testing laboratory and pay for additional samples, tests, and inspections required by Contractor beyond specified requirements.
6. Arrange with OWNER's agency and pay for additional samples, tests, and inspections required by Contractor beyond specified requirements.

E. Retesting required because of non-conformance to specified requirements shall be performed by the same agency on instructions by OWNER. Payment for retesting will be charged to the Contractor by deducting testing charges from the contract sum.

3.4 MANUFACTURER'S FIELD SERVICES

- A. When specified in individual specification sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe site conditions, conditions of surfaces and installation, quality of workmanship, testing, and start-up as applicable, and to initiate instructions when necessary.
- B. Submit qualifications of observer to the OWNER five (5) days in advance of required observations; observer subject to the OWNER's approval.
- C. Report observations and site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturers' written instructions.

3.5 DEFECT ASSESSMENT



- A. Contractor shall replace Work or portions of the Work not conforming to specified requirements.
- B. If, in the opinion of the OWNER, it is not practical to replace the work, the OWNER will direct an appropriate remedy or adjust payment.
- C. Contractor shall implement the appropriate remedy at no additional cost to the OWNER.

## **PART 4 – MATERIALS AND EQUIPMENT**

### **4.1 GENERAL**

- A. Materials and equipment furnished and installed shall be manufactured, fabricated or constructed to meet all applicable safety requirements. All material and equipment supplied by the Contractor and incorporated in the Work shall be of new manufacture, free from defects and in strict compliance with the requirements of the Contract. When required by the OWNER, a certificate from the manufacturer or other responsible supplier shall be supplied attesting to this fact.
- B. All tools and equipment used for construction operations shall be of the size and type suitable for the Work and shall be kept in safe and good working condition at all times.
- C. The Contractor shall, whenever required during the progress of the Work and after completion of the Work, furnish proof acceptable to the OWNER that all items of equipment and all materials installed equal or exceed all requirements specified in the Contract.
- D. The Contractor shall use all means possible to protect materials and equipment from damage or degradation of any kind before, during and after installation.
- E. The Contractor shall replace any materials or equipment damaged during the performance of the Work to the approval of the OWNER and the CE. The cost of replacing damaged materials and equipment shall be borne by the Contractor.

### **4.2 SPECIFICATION OF PARTICULAR MATERIALS AND EQUIPMENT**

- A. Within the Contract, certain items are specified by brand, style, trade name, or manufacturer in order to set forth a standard of quality, and/or preference by the OWNER. Unless specifically note otherwise, it is not the intent of the Contract to exclude other processes or materials of a type and quality equal to those designated.
- B. The term "or equal" as used in the Contract does not mean that the Contractor's substitution of material or equipment will necessarily be approved as equal by the CE. If the Contractor desires to substitute material or equipment on the basis that it is equal to that specified, the Contractor must submit a written request to the CE to substitute the material or equipment. The Contractor shall not use or incorporate such material or equipment into the work until the Contractor has received written approval from the CE.

- C. No additional compensation or extension of time will be allowed the Contractor for any changes required to incorporate substituted materials or equipment.

#### 4.3 ON-SITE STORAGE

- A. The Contractor shall store all equipment and materials in a safe and suitable place in accordance with the manufacturer's recommendations. Materials and equipment shall be covered or wrapped to protect them from moisture, dust and deteriorates, as required or necessary. All on-site storage areas shall be approved in advance by the OWNER and the CE.

#### 4.4 OFF-SITE STORAGE

- A. The Contractor may be required to provide offsite storage of equipment and materials to enable construction to occur at the Work site. The Contractor has full responsibility to secure all offsite storage areas, if needed, and shall include the costs for providing such storage areas in the bid Proposal for the individual equipment and material items requiring off-site storage. All off-site storage areas shall be enclosed or fenced and be secure.

#### 4.5 DEFECTIVE MATERIALS, EQUIPMENT, AND WORKMANSHIP

- A. Materials, equipment, or workmanship which, in the opinion of the OWNER or the CE, does not conform to the Contract or are in any other way unsatisfactory or unsuited to the purpose for which they are intended may be rejected. The Contractor shall remove from the Work site without delay, all rejected materials, equipment and work, and shall promptly replace the same in strict conformity with the requirements of the Contract. Unsatisfactory materials, equipment and workmanship may be rejected at any time, notwithstanding any previous testing, inspection or acceptance of such materials, equipment or workmanship, or inclusion thereof in any previously approved estimate for payment.
- B. If the Contractor fails to correct defective Work, equipment or materials, the OWNER shall have the right to exercise any of the following options or any combination thereof:
  - 1. The OWNER may replace the defective Work, materials or equipment by purchase from or contract with any other parties at the expense of the Contractor, in this event, the OWNER shall be entitled without compensation to the Contractor, to the use of the defective Work or equipment for such reasonable time as is necessary to enable OWNER to replace such defective work, materials or equipment.
  - 2. The OWNER may elect to accept the defective Work, materials or equipment and issue a Change Order reflecting a credit against the contract price, computed under the terms of the Contract in an amount to be determined by the CE, which amount shall reflect the actual value to the OWNER of the accepted work.
- C. Upon receipt of notice from the OWNER of any defects in material, equipment or workmanship which appear within a two-year period following the Substantial Completion Date, or within any other warranty or guarantee period required by the Contract or provided by a manufacturer or supplier, the Contractor shall promptly and

with the least possible delay and inconvenience to the OWNER, repair or replace such defective workmanship, material or equipment without expense to the OWNER. Such defective workmanship or material shall be repaired or replaced to the satisfaction of the OWNER or the CE. Should the Contractor fail to act promptly, or should the circumstances require repairs or replacements to be made before the Contractor can be notified or can respond to notification; the OWNER shall have the right to make the necessary repairs or replacements at the expense of the Contractor.

- D. The Contractor shall be responsible for full cost of correcting defective work and complying with warranties and guarantees as required by the Contract, including, but not limited to, transportation charges and cost of dismantling and reassembling equipment. All warranties, guarantees, and other obligations to correct work that does not comply with the Contract are material requirements of, this Contract. The performance of all warranties, guarantees and other obligations shall be secured by the performance bond and the labor and material payment bond submitted by the Contractor at the time the Contract is signed.

## **PART 5 – COMPENSATION**

### **5.1 LUMP SUM**

- A. Payment for the work described in this Section and shown on the Contract Drawings, including all labor, materials, services and equipment necessary to complete the work to the satisfaction of the Owner shall be included in the lump sum price bid on the proposal sheet.

**END OF SECTION**

## **SECTION 01500**

### **TEMPORARY CONSTRUCTION FACILITIES**

#### **PART 1 GENERAL**

##### **1.1 GENERAL REQUIREMENTS**

###### **1.1.1 Site Plan**

The Contractor shall prepare a site plan indicating the proposed location and dimensions of any areas to be used by the Contractor, the type of facilities to be used, avenues of ingress/egress to the areas, and details of installation. Any toilet facilities used shall be fully self-contained.

###### **1.1.2 Identification of Employees**

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display identification as approved and directed by the CE. Prescribed identification shall immediately be delivered to the CE for cancellation upon release of any employee. Contractor and subcontractor personnel shall wear identifying markings on hard hats clearly identifying the company for whom the employee works.

##### **1.2 AVAILABILITY AND USE OF UTILITY SERVICES**

###### **1.2.1 Utility Services**

The Contractor is informed that utility services are not available in the work area and any such use or need by the Contractor shall be at his expense.

###### **1.2.2 Telephone**

The Contractor shall make arrangements and pay all costs for telephone facilities desired.

##### **1.3 CLEANUP**

Construction debris, waste materials, packaging material and the like shall be removed from the work site daily. Any dirt or mud which is tracked onto paved or surfaced roadways shall be cleaned away. Stored material shall be neatly stacked when stored.

#### **PART 2 PRODUCTS (Not Applicable)**

#### **PART 3 EXECUTION (Not Applicable)**

### **END OF SECTION**

## **SECTION 01525**

### **SAFETY AND OCCUPATIONAL HEALTH REQUIREMENTS**

#### **PART 1 GENERAL**

##### **1.1 DESCRIPTION**

This section includes Contractor requirements for workplace safety.

##### **1.2 REFERENCES**

The publication listed below form a part of this specification to the extent referenced. The publication is referred to within the text by the basic designation only.

###### **VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)**

VDOT            2007 Road and Bridge Specifications

VDOT            2005 Virginia Work Area Protection Manual

###### **CODE OF VIRGINIA**

VOSH            Virginia Occupational Safety and Health Standards

###### **OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION**

OSHA            Occupational Safety and Health Standards 1910 Subpart T –  
Commerical Diving Operations

OSHA            Confined Spaces in Construction Standards (29 CFR Part 1926)

##### **1.3 SUBMITTALS**

Section Not Used

#### **PART 2 PRODUCTS**

Section Not Used

#### **PART 3 EXECUTION**

##### **3.1 CONSTRUCTION WORK**

- A.     The contractor shall comply with all requirements of the VDOT Road and Bridge Specifications Section 107.17 – Construction Safety and Health

Standards, OSHA Commercial Diving Operations Standards, and OSHA Confined Spaces in Construction Standards.

- B. All Work under this Contract shall be performed in a safe manner. The Contractor and all subcontractors shall comply with all applicable rules, regulations, and safety standards of the Virginia Occupational Safety and Health Standards adopted under the Code of Virginia and all other federal, state, local and other governmental entities having jurisdiction over the project. The Contractor shall be solely and completely responsible for the conditions of the job site, including the safety of all persons and property during the performance of the Work. This requirement shall apply continuously and not be limited to normal working hours.
- C. The Engineer's review of the Contractor's work plan, safety plan, construction sequences, schedule or performance does, not and is not intended to include review or approval of the adequacy of the Contractor's safety measures in, on, or near the job site. The Engineer does not purport to be a safety expert, and is not engaged in that capacity under this Contract. The Engineer has neither the authority nor the responsibility to enforce construction safety laws, rules, regulations, or procedures, or to order the stoppage of Work for claimed violations thereof.
- D. The Contractor shall exercise all required and appropriate precautions to protect all persons and property from injury and damage.

#### **PART 4 COMPENSATION**

##### **4.1 LUMP SUM**

- A. Payment for the work described in this Section and shown on the Contract Drawings, including all labor, materials, services and equipment necessary to complete the work to the satisfaction of the Owner shall be included in the lump sum price bid on the proposal sheet.

**END OF SECTION**

## **SECTION 01700**

### **PROJECT CLOSEOUT**

#### **PART 1 - GENERAL**

- A. Comply with requirements stated in General Conditions of the Contract for administrative procedures in closing out the Work.

##### **1.1 RELATED SECTIONS**

- 1. Cleaning: Section 01710.

##### **1.2 CONTRACTOR'S CLOSEOUT SUBMITTALS TO THE OWNER**

- A. Evidence of compliance with requirements of governing authorities:
  - 1. Certificates of inspection required by authorities having jurisdiction over the work.
  - 2. Warranties and Bonds: To requirements of governing authorities.
  - 3. Evidence of Payment and Release of Liens: Certificate of Insurance for Products and Completed Operations.
  - 5. Project Record Drawings.
  - 6. Final Invoice

#### **PART 2 - PRODUCTS**

NOT USED

#### **PART 3 – EXECUTION**

NOT USED

**END OF SECTION**

## **SECTION 01710**

### **CLEANING**

#### **PART 1 – GENERAL**

##### **1.1 DESCRIPTION**

- A. Maintain premises free of accumulation of waste, debris, and rubbish, caused by operations.
- B. At completion of Work, remove waste materials, rubbish, tools, equipment, machinery and surplus materials, and clean all sight-exposed surfaces. Leave project site clean and ready for public use.

##### **1.2 RELATED SECTIONS:**

- 1. Project Closeout: Section 01700.
- 2. Cleaning for Specific Products or Work: Specifications Section for the Work.

##### **1.3 SAFETY REQUIREMENTS**

- A. Hazard Control
  - 1. Store Volatile wastes in covered metal containers, and remove from premises daily.
  - 2. Prevent accumulation of wastes, which create hazardous conditions.
  - 3. Provide adequate ventilation during use of volatile or noxious substances.
- B. Conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws.
  - 1. Do not burn or bury rubbish and waste materials on project site.
  - 2. Do not dispose of volatile wastes, such as mineral spirits, oil, or paint thinner, in storm or sanitary drains.
  - 3. Do not dispose of wastes into streams or waterway.

#### **PART 2 - PRODUCTS**

##### **2.1 MATERIALS**

- A. Use only cleaning materials recommended by manufacturer for surface to be cleaned.
- B. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.



## **PART 3 - EXECUTION**

### **3.1 DURING CONSTRUCTION**

- A. Execute cleaning to ensure that grounds, and public properties are maintained free from accumulations of waste materials and rubbish.
- B. Wet down dry materials and rubbish to lay fugitive dust and prevent blowing dust.
- C. Provide adequate on-site containers for collection of waste materials, debris and rubbish.
- D. At reasonable intervals during progress of Work, remove waste materials, debris and rubbish from site and legally dispose of at public or private dumping areas.
- E. Handle materials in a controlled manner with as few handlings as possible.
- F. Insure that all existing drainage ditches and conduits within the Project area are kept open.

### **3.2 FINAL CLEANING**

- A. Employ experienced workmen, or professional cleaner, for final cleaning.
- B. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from or on exterior finished surfaces.
- C. Repair, patch and touch up marred surfaces to specified finish, to match adjacent surfaces.
- D. Broom clean paved surfaces. Rake clean other surfaces or ground.
- E. Maintain cleaning until Project, or portion thereof, is accepted by the Owner.

**END OF SECTION**

## **SECTION 01900**

### **RECORD DOCUMENT**

#### **PART 1 – GENERAL**

##### **1.1 DESCRIPTION OF WORK**

- A. The Contractor shall maintain and provide the Construction Engineer (CE) with project record documents as described herein.
- B. Maintenance of Documents
  - 1. Maintain on site in clean, dry, legible condition complete sets of the following: Contract Drawings, Specifications, Addenda, approved Shop Drawings, Samples, Photographs, Change Orders, other Modifications to the Contract, Field Orders, Work Change Directives, Test Records, Survey Data, Permits, and all other documents pertinent to the Contractor's work.
  - 2. Make documents available at all times for inspection by the CE.
  - 3. The Contractor shall demonstrate at each progress meeting or when progress payment applications are submitted that annotations have been kept current before progress payments will be authorized. Progress payments may be withheld for failure to maintain neat and accurate record documents.
- C. Marking:
  - 1. Use the following color code unless otherwise approved by the CE:
    - a.) Deletions: Green
    - b.) Additions: Red
    - c.) Notes and comments: Blue
- D. Recording
  - 1. Keep record documents current and updated at least weekly.
  - 2. Do not permanently conceal any work until required information has been recorded.
  - 3. The Contractor shall record in waterproof color ink in a neat and legible manner on one set of Contract Drawings (a clean set of prints set aside for record documents only) all deviations from the drawings at the time such deviations are made.
  - 4. Record information shall include the following as a minimum, where applicable. Include sufficient reference and descriptions to determine exact field conditions and locations.

- a. Size, horizontal and vertical location of all existing utilities uncovered during the course of the work. This shall include telephone cables and conduits, electrical cables and conduits, gas lines, water lines, sewer force mains, sanitary sewers, storm drains, and the like.
- b. Horizontal location of lines plugged or capped.
- c. Field changes of dimensions or details.
- d. Changes made by Change Order, Field Order, or Work Change Directive.
- e. Details not on original contract drawings.
- f. Changes of different method of construction.
- g. Use of different products not specified.
- h. Sizes and types of material used and changes in sizes and types of materials.
- i. Locations of all sleeves, bends, and other fittings used.
- j. Rim elevations of inlets and invert elevations of all pipes entering and exiting the inlets.

E. Record Drawing Accuracy:

- 1. Horizontal Survey Accuracy: +/- 0.1 ft
- 2. Vertical Survey Accuracy
  - a.) Stormwater Outfall Elevation: +/- 0.1 ft
  - b.) Inlet rim and invert: +/- 0.01 ft

## **PART 2 - PRODUCTS**

Section Not Used

## **PART 3 – EXECUTION**

Section Not Used

## **PART 4 – COMPENSATION**

### **4.1 BASIS OF PAYMENT**

- A. Payment for work described in this Section and shown on the Contract Drawings, including all labor, materials, services and equipment necessary to complete the work to the satisfaction of the Owner, shall be compensated in accordance with Specification Section 01270 Measurement and Payments.

**END OF SECTION**

## **SECTION 02220**

### **STRUCTURAL DEMOLITION**

#### **PART 1 GENERAL**

##### **1.1 REFERENCES**

The current version of publications listed below form a part of the specification to the extent referenced. The publications are referred to within the text by the basic designation only.

##### **AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)**

ANSI A10.6                                      Safety Requirements for Demolition Operations

##### **1.2 GENERAL REQUIREMENTS**

Do not begin demolition until authorization is received from the CE. The work includes demolition, salvage of identified items and materials, and removal of resulting rubbish and debris. Rubbish and debris shall be removed from the project site daily, unless otherwise directed, to avoid accumulation at the demolition site. Materials that cannot be removed daily shall be stored in areas specified by the CE.

##### **1.3 REGULATORY AND SAFETY REQUIREMENTS**

Comply with federal, state, and local hauling and disposal regulations. Safety requirements shall conform to ANSI A10.6.

##### **1.4 DUST AND DEBRIS CONTROL**

Prevent the spread of dust and debris to adjacent structures and buildings and avoid the creation of a nuisance or hazard in the surrounding area. Do not use water if it results in hazardous or objectionable conditions such as, but not limited to, ice, flooding, or pollution.

##### **1.5 PROTECTION**

###### **1.5.1 Existing Work**

Before beginning any demolition work, the Contractor shall survey the site and examine the drawings and specifications to determine the extent of the work. The Contractor shall take necessary precautions to avoid damage to existing items to remain in place, to be reused, or to remain the property of the City of Norfolk; any damaged items shall be repaired or replaced as approved by the CE. The Contractor shall coordinate the work of this section with all other work and shall construct and maintain shoring, bracing, and supports as required. The Contractor shall ensure that structural elements are not overloaded and shall be responsible for increasing structural supports or adding new supports as may be required as a result of any cutting, removal, or demolition work performed under this contract. Do not overload

structural elements. Provide new supports and reinforcement for existing construction weakened by demolition or removal work. Repairs, reinforcement, or structural replacement must have the CE's approval.

#### 1.5.2 Facilities

Where removal of existing utilities is specified or indicated, provide approved barricades and temporary covering of exposed areas. The Contractor shall ensure that no elements determined to be unstable are left unsupported and shall be responsible for placing and securing bracing, shoring, or lateral supports as may be required as a result of any cutting, removal, or demolition work performed under this contract.

#### 1.5.3 Protection of Personnel

During the demolition work the Contractor shall continuously evaluate the condition of the structure being demolished and take immediate action to protect all personnel working in and around the demolition site. No area, section, or component of structural elements will be allowed to be left standing without sufficient bracing, shoring, or lateral support to prevent collapse or failure while workmen remove debris or perform other work in the immediate area.

#### 1.6 BURNING

Burning at the project site for the disposal of refuse and debris will not be permitted.

#### 1.7 RELOCATIONS

Perform the removal and reinstallation of relocated items as indicated with workmen skilled in the trades involved. Repair items to be relocated which are damaged or replace damaged items with new undamaged items as approved by the CE.

#### 1.8 USE OF EXPLOSIVES

Use of explosives will not be permitted.

### **PART 2 PRODUCTS (Not used).**

### **PART 3 EXECUTION**

#### 3.1 EXISTING FACILITIES TO BE REMOVED

##### 3.1.1 Structures

Existing structures indicated on the drawings to be removed and replaced shall be removed in their entirety.

##### 3.1.2 Utilities and Related Equipment

Remove existing utilities, as indicated and terminate in a manner conforming to the nationally recognized code covering the specific utility and approved by the CE. When utility lines are encountered that are not indicated on the drawings, the CE shall be notified prior to further work in that area. If utility lines are encountered that are not shown on drawings, contact the CE for further instructions.

### 3.2 DISPOSITION OF MATERIAL

#### 3.2.1 Title to Materials

Except where specified in other sections, all materials and equipment removed, and not reused, shall become the property of the Contractor and shall be removed from the Owner's property. Title to materials resulting from demolition, and materials and equipment to be removed, is vested in the Contractor upon authorization by the CE to begin demolition. The City of Norfolk will not be responsible for the condition or loss of, or damage to, such property after contract award. Materials and equipment shall not be viewed by prospective purchasers or sold on the site.

#### 3.2.2 Reuse of Materials and Equipment

Remove and store materials and equipment indicated to be reused or relocated to prevent damage, and reinstall as the work progresses.

### 3.3 CLEANUP

Debris and rubbish shall be removed completely from the project site. Debris shall be removed and transported in a manner that prevents spillage on streets or adjacent areas. Local regulations regarding hauling and disposal shall apply.

**END OF SECTION**